Tariff Authority for Major Ports

NOTIFICATION

No.TAMP/89/99-COPT - In exercise of the powers conferred by Sections 49 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for major Ports hereby disposes of the representation submitted by M/s. Amrok Shipping Private Limited seeking a separate tariff structure for coastal containers at the Cochin Port with retrospective effect, as in the Order appended hereto.

SCHEDULE

Case No.TAMP/89/99-COPT

M/S. Amrok Shipping Private Limited … Applicant
The Cochin Port Trust … Respondent

ORDER

( Passed on this 10th day of April 2000 )

This case relates to a representation received from M/s. Amrok Shipping Private Limited requesting for separate tariff structure for coastal containers at the Cochin Port Trust (COPT) with retrospective effect.

2. In their representation, M/s. Amrok Shipping Private Limited have made the following points:

(i). They are the pioneers in coastal container transportation in the country and started operation in May 1998. They are bringing cargo from Pipavav in Gujarat to Cochin exclusively in containers as part of a multi model operation.

(ii). Due to certain arbitrary decision of the COPT in respect of the tariff structure the operation has now come to a standstill.

(iii). The TAMP has notified tariff for various services with segregation of foreign vessels and coastal vessels with a difference of about 35% to 40% on rates.
(iv). They do exclusively coastal transportation services through the COPT; and, there is absolutely no diversion of containers to other countries. Till date, they have moved more than 15,000 TEUs which were fully duty paid domestic containers.

(v). The COPT has levied tariff as applicable to foreign containers in US dollar rates as no specific rates are prescribed for coastal containers.

(vi). They have been assigned separate space for storing/stacking for containers in the Cochin Port. However, they are not allowed to pay ground rent charges as in the case of domestic break bulk cargo where the charge is fixed for the space used or reserved. The only difference is that they bring in, store, and transport cargo through containers. Otherwise, the same cargo would have come in as break bulk, stored and transported in loose condition.

(vii). The project has become highly unviable and they are forced to curtail their activities. They have also represented the matter to the Ministry of Surface Transport (MOST).

3. The MOST has also requested this Authority to examine the feasibility for notifying the tariff structure for coastal containers, if not available in the present Scale of Rates and also examine whether in the absence of any tariff structure for coastal containers, coastal shipping will be adversely affected.

4. In accordance with the procedure followed by the TAMP, the representation of M/s. Amrok Shipping Private Limited was circulated to the Cochin Port Trust, the Jawaharlal Nehru Port Trust (as a major container port) and also among various users/representative bodies of users for their comments. Comments received from them are summarised below:

**Cochin Steamer Agents’ Association**

(i). It was with a view to promote coastal traffic that the Government of India granted concessional rates for coastal vessels in respect of port and other related charges.

(ii). It is only logical that this concession to be granted to coastal container traffic as well, in order that such traffic gains momentum.

(iii). We strongly support the representation made by M/s. Amrok Shipping Private Limited. They have cautioned that containers moving on its first leg as coastal traffic and then at a later stage
finding its way to overseas destinations, are not granted any such concession.

**Indian National Shipowners’ Association**

(i). Coastal Shipping, besides being environment friendly, is the most economical mode of transport as no rail tracks or roads have to be laid and maintained. For various reasons including ill information, priority given for rail or road has left coastal shipping as under developed and on deathbed. As a result, natural sea-lanes provided round the country go unutilised / unharnessed.

(ii). Coastal cargoes are low priced and low freighted hence cannot bear the high port tariffs and port dues, stevedoring, trucking costs, etc.

(iii). Domestic cargoes / goods move freely at competitive rate from a market area in one town / city to a market area of another city / town whereas coastal cargoes moving through ports are being made to bear the brunt of same high tariff being applied to international ships resulting in inflated fees, charges / tariffs to coasting cargoes which rate it cannot bear in contrast to those borne by domestic cargo moving by road / rail. The result is that coastal shipping even though being the economical mode is made most expensive.

(iv). Most of the ports provide concessional port tariffs (vessel-related) for coastal ships.

(v). The principles needs to be firmly prescribed for all ports and for all tariff / fees / charges / dues to be 50% lower than foreign-going ships and be quoted in Rupees. Similarly container handling / terminal charges be reduced at 50% below charges for foreign containers. This should equally apply to vessels feeding coastal cargoes for hub ports. Such a step will discourage movement of container via adjacent foreign ports thereby arresting outgo of foreign exchange.

**The Shipping Corporation of India**

(i). We agree with the representation submitted by M/s. Amrok Shipping Private Limited. All the Major Ports shall have a common policy on tariff rate for coastal ships and coastal cargoes in containers as well as in break bulk. The coastal tariff shall be about 40% to 50% of the tariff set for foreign-going vessels and denominated in Indian Rupees.
(ii). Coastal tariff for containers shall also be applicable for containers which have Export/Import cargoes and are being transhipped at another Indian Port for mainline vessel connections for transportation to/from foreign ports and vice-versa for Imports. The elements of Coastal Tariff applicable to such containers will be:

(a) for transportation from the CY to Ship’s Hook and vice versa; and,

(b) for on board stevedoring.

(iii). This will give an incentive to feeder operators to call at the Port for carrying containers and transhipment through Indian hub ports instead of Indian trade being transhipped at foreign ports viz. Colombo, Singapore, Dubai, etc. The outflow for foreign exchange can also be saved.

**The Container Shipping Lines Association**

(i). To encourage the development of India’s own hub port for container services, the CSLA is of the view that services such as that offered by M/s. Amrok Shipping Private Limited must be encouraged. In the absence of adequate coastal services provided by Indian flag or foreign flag vessels the initiative to develop transhipment hubs will come to nothing.

(ii). The Government of India has accepted the recommendations of the Afzalpurkar Committee to facilitate coastal shipping, whose recommendations have been further endorsed by the Pinto Committee, the Empowered Committee and the National Shipping Board.

(iii). M/s. Amrok Shipping Private Limited have pioneered the coastal movement of containerised cargo and have moved substantial volumes of traffic between Indian Ports. This business must be encouraged and not penalised.

(iv). It is unclear as to the logic of charging ground rent for coastal containers in US dollars. Such charges shall be denominated in Indian Rupees as is the case with demurrage/storage charges for break bulk cargo.

**MAERSK India Limited**
The plea of M/s. Amrok Shipping Private Limited may be viewed by the TAMP sympathetically on the ground as given by the CSLA.

**Confederation of Indian Industry**

(i). In all Major Ports, only the vessel related charges are levied the differential rates for foreign-going vessels and coastal vessels. As regards container handling charges including ground rent are denominated in US dollars but collected in Indian Rupees and no differentiation of foreign container or coastal container is made in the tariff structure. Hence the party’s perception that the ground rent applied for stacking their containers was charged on rates similar to that of foreign containers may not be correct.

(ii). TAMP has issued orders on classification of vessels as ‘coastal’ and ‘foreign-going’ for tariff purposes. However, no such order has been issued on classifying containers into ‘coastal’ and ‘foreign-going’. TAMP may like to decide on whether containers related charges will also be notified separately for these two categories.

**Jawaharlal Nehru Port Trust**

(i). The representation made by M/s. Amrok Shipping Private Limited is on a matter relating to COPT in particular and we do not find enough point to comment on it.

(ii). As far as JN Port is concerned, coastal movement of containers is mainly intended for transhipment and not for domestic consumption so far.

(iii). Containers for transhipment are already enjoying the concessional tariff which amounts to the handling charges for one leg of operation either for import or export.

(iv). Transhipment containers are given free period of 30 days as against 7 days for export containers and 3 days for import containers.

(v). Vessels engaged in coastal services are already enjoying concessional rates in respect of berth hire charges, pilotage and port dues.

**Cochin Port Trust**

(i). M/s. Amrok Shipping Private Limited, Cochin had been bringing Coastal Containers from Pipavav to Cochin from April 1998. They
had defaulted payment of Rs.19,55,029/- to Cochin Port Trust towards ground rent of containers and vessel related charges.

(ii). Lower rates of vessel related charges are levied from the company as per the tariff structure of the COPT. This concession as envisaged for promotion of coastal shipping, has duly been extended to this company also.

(iii). The company submitted a representation on 13 November 98 i.e. after 8 months of starting their coastal operations requesting that the Port should not charge any ground rent on their containers and, instead, charge only lease rent for the storage area. This could not be agreed to, as the Port’s Scale of Rates provided no such provisions. Demurrage charge / ground rent on containers stored within wharf premises is charged in all Ports and, therefore, M/s. Amroko Shipping could not be given any special dispensation.

(iv). Coastal vessels enjoy concession only in respect of vessel related charges like Port dues, Pilotage, etc., whereas in the case of wharfage on cargo, storage charges, equipment hire charges, etc., the rates for the coastal and foreign vessels are the same. The wharfage on containers is, however, lower than that on general cargo.

5. A joint hearing in this case was held at the COPT. During the course of the joint hearing the following submissions were made:

**M/s. Amroko Shipping Private Limited**

(i). Our service is an innovative initiative.

(ii). We want concessions in cargo related charges also.

(iii). There is a lacuna in the tariff structure now. This lacuna must be removed.

(iv). In our operation there is no foreign exchange element at all.

(v). Do not confuse our case with ‘transhipment’ containers at all. Ours is a case of ‘domestic cargo’ in ‘domestic containers’ for ‘domestic markets’.

(vi). In the 1989 Scale of Rates of the COPT, this facility was available to cargo related charges item also.
(vii). Our containers are coastal containers which are required to be stored separately. No Customs formalities are involved.

(viii). We are not talking only of ‘rupee denomination’. We want a definite concession in tariffs. The 1989 Scale of Rates was revised in January 1999 and the concession was given up. We do not know why.

(ix). According to the Merchant Shipping Act only ‘coastal vessel’ can carry coastal cargo. That is why the column headings cited by the COPT to defend its action.

(x). The relevant notes, in the Scale of Rates refer to payment by “shippers or importers” and not by vessels. Therefore, the reference clearly is to cargo related charges.

(xi). The disputed period in this case is March 98 to March 99. The COPT cannot take advantage of the revised Scale of Rates of January 1999.

(xii). The Scale of Rates contains many items especially relating to containers. Some are denominated in dollar terms, which cannot be applied to coastal vessels.

(xiii). Definition of demurrage covers “all cargo”. By all means apply that demurrage. Do not charge ground rent.

**Cochin Port Trust**

(i). There is no distinction between ‘foreign cargo’ and ‘coastal cargo’. The distinction is limited only to ‘foreign’ and ‘coastal’ vessels. Therefore, M/s. Amrok Shipping are not entitled to any relief.

(ii). In the Scale of Rates of 1989, tariffs are not different for coastal cargo. There is no definition of ‘coastal container’ at all. The column headings are ‘coastal vessels’ and ‘foreign vessels’.

(iii). Even if there is such a difference, the Port Trust policy keeps changing. May be the COPT approach / policy has changed.

(iv). If there is to be any concession for ‘coastal’ cargo, why only for containers? It must be for all cargo.

(v). There can be no retrospective revision. If at all, it can only be prospective.
(vi). In the 1989 Scale of Rates, there was no concession for coastal cargo-related charges. The distinction was only between vessel-related charges and cargo-related charges.

(vii). There were a couple of anomalous entries which did not represent any deliberate policy.

(viii). A consideration of ‘concession to coastal cargo’ will call for a lot more of scrutiny and discussions. It cannot be settled as a part of this case.

**Jawaharlal Nehru Port Trust**

‘Transhipment’ operation is different from ‘coastal’ operation.

**Shipping Corporation of India**

(i). It is the Government policy to promote coastal traffic. Recently again the Government has ordered priority berthing for coastal vessels.

(ii). Apply the concession to all the ports.

(iii). Coastal traffic must remain with national lines - foreign lines shall not be allowed to carry coastal cargo.

**The Container Shipping Lines Association**

(i). Promote coastal traffic. It will reduce road / rail congestion. It will promote development of ‘hub’ ports.

(ii). Movement of containers is separate and distinctive from bulk cargo. Whether ‘coastal’ or ‘foreign’, containers must be promoted. Consider concessions for containers.

(iii). While defining ‘coastal’, etc., look ahead at least by 5 years.

(iv). To promote coastal traffic give concession to it. But do not waste time about ‘national’, ‘foreign flag’, etc.

**Indian National Shipowners’ Association**

(i). Why bother about detailed definitions? Government policy is only for giving concession to vessel related charges. If cargo related charges are to be given concession, give to all containers. Road / rail congestion has to be reduced.
(ii). Let there be a new policy on Multi Modal Transportation and a new container policy.

**Cochin Steamer Agents Association**

In 1989 concessional tariff for coastal cargo was given. This has been removed. Reinstate the same to help cases like Amrok Shipping.

6. During the joint hearing, the COPT was directed to give a note about the action taken on M/s. Amrok Shipping Private Ltd’s application routed through the Steamer Agents’ Association at the time of the 1999 revision, arguing for retention of the facility given in the 1989 Scale of Rates even to cargo-related charges for dollar denomination.

7. In their reply, the COPT has made the following submissions:

(i). Before approving revised Scale of Rates with effect from 30 December 98, the TAMP held a joint hearing with the COPT and the various port users. The Port Trust did not make any proposal for concessional ground rent and handling charges for the coastal container as there was no concession provided in the pre-revised Scale of Rates and also there was no such concession allowed in any of the Major Port Trust in India. The Port Users who were present in the joint hearing also did not take up this matter. The term “Coastal Containers” is used to mean containers shipped through coastal vessels.

(ii). M/s. Amrok Shipping Private Limited had submitted a representation on 30 November 98 after eight months of starting their coastal operations, requesting the port trust to fix a lower rate of ground rent on coastal cargo which was examined and the party was informed that there was no justification for providing any lower rate for their coastal containers.

(iii). From May 1999 onwards, M/s. Amrok Shipping Private limited started defaulting on their payment of charges. There were outstanding dues of about Rs.1955 lakhs and even after reminders they failed to remit the amount. Hence the COPT stopped services to them.

(iv). M/s. Amrok Shipping again represented in August 99 insisting that concessional charges should be considered on gantry charges, transfer crane charge, transportation of containers, etc., and levy of lease rent on the space occupied by the containers and also to apply all these
concessions with retrospective effect. M/s. Amrok Shipping had also submitted a representation in the MOST on which the COPT explained their stand to the Ministry.

8. The COPT has summarised that their stand towards the pleas of M/s. Amrok Shipping Private Limited has been constantly as follows:

(i). The tariff rates are linked to the services rendered. Space occupied and handling operations are same for coastal as well as foreign containers. As such, no concession will be given.

(ii). As per the Government policy to encourage the coastal traffic / vessels, the concession on vessel related charges on coastal vessels have already been extended.

(iii). There is no provision for leasing out space in the container terminal for stacking the containers and as per the existing Scale of Rates, the Port Trust is rightfully collecting the ground rent charges on the containers irrespective of they being coastal or foreign.

(iv). The billing done on the services rendered to M/s. Amrok Shipping during 1998 and 1999 where as per the rates provided in the Scale of Rates prevailing at that point of time. In respect of ground rent, there is only one rate denominated in US dollars which had been applied in the case of containers handled by M/s. Amrok Shipping Private Limited. Presently, there is no concessional rate for ground rent in the case of coastal containers.

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

(i). The request is for granting a relief retrospectively. There does not appear to be any justification for that.

(ii). The argument is that the Scale of Rates (until its amendment in December 98) had a provision for concessions to coastal containers. While it is a fact that there was such a provision, there is disagreement between the Applicant and the COPT about its interpretation. In other words, strictly speaking, the dispute mainly is about ‘billing’, which should be settled between the parties.

(iii). The Applicant has complained that the said provision (for concessions) was unjustifiably removed ignoring his petition.
It is relevant here to recognise that the said provision was removed at the
time of the general revision of rates in December 98. Three considerations
weighed with the COPT then for proposing its removal:

(a). The Government policy was confined to giving concessions in vessel-related
charges for promoting coastal traffic. There was no policy of giving concessions
in cargo-related charges.

(b). No other major port was giving any concessions in cargo-related charges to
coastal traffic.

(c). Giving up the provision will be in the financial interest of the COPT.

As regards the complaint about ignoring the Applicant’s petition, it is to be
noted that it was not brought up by anyone at the time of the joint hearing set up by
the Authority in the earlier case. The COPT had rejected it; and, the Association
concerned also did not raise the issue. It cannot, therefore, be reasonably alleged
that the petition was ignored by this Authority.

(iv). There is a strident demand for introduction of concessions for
coastal cargo. The COPT itself has also not questioned the basic logic of this
demand. Interestingly, in another case relating to the Mumbai Port Trust (MBPT)
also this issue has come; and, the MBPT has joined all its users to demand such
concessions. But, this issue will have to be seen apart from the Applicant’s
petition in this case; and, it will have to be seen in a prospective light. In other
words, even if it is decided to introduce such concessions as a policy initiative, it
cannot be of any help to the Applicant in their case relating to the period 1998-99.

10. In the result and for the reasons as given above, and based on a
collective application of mind the Authority decides as follows:

(i) The application submitted by M/s. Amrok Shipping Private Limited
to grant relief retrospectively with reference to the containers handled
by them at the COPT is rejected.

(ii) The dispute between M/s, Amrok Shipping Private Limited and the
COPT about the concessions to be granted for the period before
December 98 should be settled between them in accordance with the
Scale of Rates of the COPT applicable during that period.

(iii) The question of prospectively granting concessions in handling of
coastal containers in Major Ports will be considered in detail by the
Authority separately.

S.SATHYAM, Chairman