

No.120

New Delhi, the 28th August, 2000

## Tariff Authority for Major Ports

### 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 clarifies various issues confronted by some Port Trusts while implementing its Order dated 10 November 99 prescribing a time limit of two months for levy of storage charges on abandoned FCL Containers / Shippers Owned Container and other than Shipper Owned Containers, as in the Order appended hereto.

( S. Sathyam, Chairman )

Case No. TAMP/86/99 – Misc.

### ORDER

( Passed on this 19th day of July 2000 )

This Authority had passed an Order dated 10 Nov. 99 prescribing a time limit of 2 months for levy of storage charges on abandoned FCL Containers / Shipper Owned Containers and other than Shipper Owned Containers for common adoption by all the Major Port Trusts. In the Order, all the Major Port Trusts were directed to introduce the following note in their Scale of Rates:

- “ (i). Storage charges on abandoned FCL Containers / Shipper Owned Containers shall be limited up to the date of receipt of intimation of abandonment in the Harbour Office in writing or 2 months from the date of landing of the container, whichever is earlier, for such abandoned FCL Containers / Shipper Owned Containers.

Immediately on receipt of the intimation of abandonment in the Harbour Office in writing, the Traffic Manager shall ensure that steps are taken at once to facilitate removal of the container from the storage area and for destuffing it without any loss of time.

- (ii). The Containers other than Shipper Owned Containers shall be removed from the regular storage area and moved to Sale Warehouse / Overflow Sheds by the Port Trust at the cost and responsibility of the Main Line Operators (MLOs); and, thereafter, the container can be destuffed before the empty containers are removed from the Port Trust premises by the MLOs.”

2.1. This Authority has received requests from some of the major ports and port users for a review of the Order towards clarification of some issues coming in the way of a smooth implementation of the Order.

2.2 The CHPT has proposed that the word ‘whichever is later’ may be replaced by ‘whichever is earlier’ used in Para (i) of the Order. The CHPT has pointed out that if the Steamer Agents / MLOs serve abandonment letter on the next day of the landing of the containers, the Port has to accept it and can not recover storage charges up to 2 months. The CPT while requesting modification of the Order, has pointed out that limit of period of realisation of demurrage for failure on the part of the consignee to clear

the cargo with reference to Sections 61 and 62 of the MPT Act was a subject of dispute in a litigation in which the Hon'ble Supreme Court ruled that the said two Sections of the Act relating to sale and disposal of the uncleared goods are mere enabling provisions and do not cast any obligation upon the Board. The CPT has also brought out the procedure of destuffing of containers saying that it has no control over destuffing. Agreeing with the views of the CPT, the JNPT has stated that the Port should not be asked to restrict its demurrage to two months. The JNPT has requested for a review of the Order. It has also cited the example of the airlines responsibility in the case of returning of stowaways to the point of origin. The KPT has opined that the cargo can be abandoned by the owner i.e. importer but not by the shipping line agents. M/s. Transworld Shipping Services (I) Pvt. Ltd., has stated that the letter of abandonment can be given by the Lines.

3. With reference to the issues raised above and based on a collective application of mind the various issues raised are clarified as follows:

*ISSUE : (i). The Calcutta Port Trust has opined that the Order of the TAMP dated 10 November 1999 violated the provisions of Sections 61 and 62 of the MPT Act, 1963,*

*Clarification :* The Court Order referred by the CPT is relating to the obligation of issuing a notice under Section 62 of the Act. The Court has observed that the ports have power to collect the demurrage even beyond the stipulated period if the cargo is lying beyond that period. The Order in reference speaks only about the containers and not the containerised cargo. The question of auction arises only in the context of the cargo and not the container. The container, being the property of the Shipping Line is to be returned to the lines and hence the question of selling it does not arise. Further, the Order does not stipulate keeping the goods beyond two months and not collecting any levy for the same. It only directs the Port Trust to take timely action to sell the goods immediately after the period stipulated in the Act so that the Lines may get back their containers, which have been held up for no fault of theirs.

In effect, the Order only requires the Port Trust to exercise the power given under Section 61 & 62 and act expeditiously to clear congestion at the ports and to minimise the loss suffered by the Shipping Lines.

In the earlier Order, this Authority prescribed a period of two months for levy of storage charges on abandoned FCL Containers because a Port Trust Board, on expiry of two months from the time when any goods have passed into its custody, can sell by auction such goods which have not been cleared by then. However, in terms of Section 61(2) of the Act, the Port Trust Board is to give 10 days notice before such sale. Considering the requirement for coordinating with the customs and other agencies, a further grace period of 5 days is also found reasonable. Accordingly, instead of the two month time limit prescribed in the earlier Order, the Authority prescribes a time limit of 75 days beyond which storage charges on container shall not accrue.

*ISSUE : (ii). The earlier Order does not specify the party which can issue the letter of abandonment i.e. whether the Lines or Importers.*

*Clarification :* The intention of the Order is to return containers to the Lines after the stipulated time limit, as they need not suffer for the deficiencies on part of the consignees. This does not entitle a shipping line to issue letter of abandonment without waiting for the consignee to respond. It is for the consignee to issue a letter of abandonment.

It may be true that a shipping line technically remains as owner of the cargo till a delivery order is issued (by it) in favour of the consignee. That being so, the line also can issue an abandonment letter provided it will be take back custody of the container and remove it from the port premises. In such a case, the Line will have to pay all the port charges accrued on the container and the containerised cargo from the date of landing to the date

of clearance from the port premises. The example of stowaways cited by the JNPT is relevant in this context. Even without a letter of abandonment, a Line can resume custody of a container at any time before issuance of Delivery Order. However, if a Line chooses not to take back or remove the containers outside the port premises after paying all port charges, it has to wait till the expiry of stipulated time period since a Port Trust can not proceed to auction the goods inside the container before that.

In other words, the following will be the procedure for issue of letter of abandonment:

- (i). The consignee can issue a letter of abandonment at anytime.
- (ii). If the consignee chooses not to issue such letter of abandonment, the Line can also issue abandonment letter subject to the condition that,
  - (a) the Line shall resume custody of the container alongwith cargo and either take back it or remove it from the port premises; and,
  - (b) the Line shall pay all Port Charges accrued on the cargo and container before resuming custody of the container.

In the absence of abandonment letter either from the consignee or the Line, subject to the conditions above, a Line has no other option but to wait till expiry of 75 days for the Port Trust to act under Section 61 of the MPT Act.

*ISSUE : (iii). Who will make Arrangement for transportation and destuffing and bear the associated cost therefor?*

*Clarification :* The earlier Order dated 10 Nov. 99 clearly states that transportation of such containers will be done by the Port at the cost and responsibility of the Main Line Operators. However, the Order does not clearly mention about the destuffing operation. As pointed out by the CPT, the procedure of destuffing warrants an application of the container agents and booking of DLB gang (wherever in existence) by the Lines or their appointed stevedores. So, a Port Trust can arrange for the destuffing against a specific application of a Line or its Agents. In such cases, the Lines are required to observe the necessary formalities for destuffing and should bear the cost of destuffing also.

*ISSUE : (iv). Position regarding payment of ground rent after the expiry of 75 days if Lines do not take action for clearing the cargo out of the containers.*

*Clarification :* As pointed out above, the Port Trust will only be a facilitating agency for arranging transportation of containers and destuffing. It is for the Lines to observe the necessary formalities and bear the cost of transportation and destuffing. If the Lines are not taking such action within the stipulated period, they cannot require the Port Trust to stop levy of ground rent on container on the expiry of the stipulated period. In such cases, the ground rent will continue to be paid till such time all necessary actions are taken by the Shipping Lines for destuffing of cargo.

*ISSUE : (v). Actions to be taken by the Lines, if they want their containers back before the stipulated period.*

*Clarification :* Since the Lines are not the owners of the cargo, they cannot abandon the (containerised) cargo and take back their containers, whenever required. Since the consignees are to issue the letter of abandonment and such instances are very rare, the Lines may look for ways and means to take back their containers without waiting for the expiry of the

stipulated period when only the Port Trust can release the containers after arranging for auction of the cargo. The Lines have two options. They can take back the (loaded) containers to the port of origin. Alternatively, the Lines can resume custody of the containers and move such containers to any outside private CFS and arrange for destuffing of cargo before taking back the empty container. (In such cases, the responsibilities of the Port Trust as a 'bailee' will cease as soon as the Line resumes custody of the containers.) There are many approved private CFSs available in the vicinity of a port; and, as per the contract of carriage of goods a carrier can also dispose off the goods by auction under certain circumstances. That being so, the Lines need not depend only on the ports to take action for release of the containers.

*ISSUE : (vi). Payment of demurrage on the destuffed containerised cargo.*

*Clarification :* The demurrage on the destuffed containerised (abandoned) cargo is to be met out of the sale proceeds of the destuffed cargo. In any case, this issue is not arising only in case of the cargo destuffed from a container but is also relevant in cases of general break bulk cargo not received in containers. The existing practice relating to adjustment of sale proceeds will be applicable.

*ISSUE : (vii). Applicability of the Order in case of seized / confiscated containers by the Custom Authorities.*

*Clarification :* The earlier Order dated 10 Nov. 99 does not specify whether the provisions contained in that Order are applicable to cases of seized / confiscated containers. As pointed out by the KPT, since the ports have no control over such containers and cannot make arrangements for destuffing as the cargo along with the containers is seized / confiscated by the Custom Authorities. In such cases, however, the storage charges will cease to apply from the date the Custom Authorities order release of the cargo. Also, seized / confiscated containers can be required (by the Port Trust) to be removed (by the Line / consignee) from its premises to the Customs Bonded Area so that its space is not infructuously occupied.

**( S. Sathyam, Chairman )**

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