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 disposes of the representation made by M/s. Amira Foods (India) Limited about demurrage charges on export cargo demanded by the Kandla Port Trust, as in the Order appended hereto.

( S. Sathyam )

Chairman

Case No. TAMP/65/2000-KPT

M/s. Amira Foods (India) Ltd. … Applicant

Vs.

The Kandla Port Trust … Non Applicant

ORDER

( Passed on this 26th day of September 2000 )

This case relates to a representation made by M/s. Amira Foods (India) Limited against the unjustified and illegal demand of demurrage by the Kandla Port Trust (KPT).

2.1. The facts of the case in brief, as mentioned by the Applicant, are as given below:

(i). M/s. Amira Foods (India) Limited is a “Star Trading House” recognised by the Ministry of Commerce and exporting mainly the agro products from the KPT since many years.

(ii). The shipment of the export cargo in question was delayed and had incurred demurrage for the period from 4 April 1998 to 30 May 1998
due to the reasons beyond the control of M/s. Amira Foods (India) Limited, which were paid to the KPT as per their calculations.

(iii). Due to cyclone on 9 June 1998, the said export cargo was removed from the port godown after destroying the damaged cargo as per the directions of the KPT.

(iv). The said export cargo was finally exported on 9 September 1998.

(v). The KPT has demanded a payment of Rs.43,37,600/- towards demurrage from 18 June 2000 and also interest on delayed payment.

(vi). The KPT has served a notice vide their letter dated 5 July 2000 to M/s. Amira Foods (India) Limited to pay the demurrage on the said cargo within 10 days failing which their services will be stopped.

2.2. M/s. Amira Food (India) Limited have furnished the following documents / information in support of their contention against the levy of demurrage charges by KPT:

(i). A copy of the letter dated 30 June 99 from the Ministry of Surface Transport issuing a directive to the KPT, that export rebate should be made available to M/s. Amira Foods (India) Limited due to the following reasons:

   (a). The cargo was actually exported.

   (b). It is inconceivable that an exporter would keep cargo in the port and pay demurrage for it. The export did not take place in time only because the reasons were beyond the control of the exporter.

   (c). Taking out cargo from the port area also involves expenses. It is only in extreme situation that the cargo was damaged, it had been taken out.

(ii). A copy of the letter dated 17 June 2000 from the Oriental Insurance Company Limited that no Insurance claim was either made by M/s. Amira Foods (India) Limited or paid by them on the said export cargo.

(iii). A copy of the dock Scale of Rates, Note No. 3 of item 6 under the demurrage charges table, which states as follows:

   “No free days shall be allowed on goods brought in and removed without a definite attempt having been made for the shipment.”
2.3. M/s. Amira Foods (India) Limited have argued that the KPT is violating the provision of Section 52 of the Major Port Trust Act 1963 in view of the following:

(i) The Board of Trustees of KPT, vide Resolution No.71, in their meeting held on 9 January 97 made certain changes in the Scale of Rates and in the statement of conditions taking the plea that these are mere interpretations and not amendments.

(ii) One of the changes made was as follows:

“50% rebate in demurrage rate shall be allowed only on cargoes physically exported but not otherwise.”

(iii) The above change will increase the demurrage charges by 100% which is by all means a change in the Scale of Rates and statement of conditions, which requires approval of the Tariff Authority and Notification in the Gazette under section 52 of the Major Port Trust Act, 1963.

3. M/s. Amira Foods (India) Limited vide their letter dated 9 August 2000, have once again requested the Chairman (KPT) to review their case on the facts stated and extend the benefit as per their entitlement and rules and regulations.

4. A copy of the representation was sent to the KPT for comments. The comments of the KPT are summarised below:

(i) The Board rejected the representation made by M/s. Amira Foods (India) Limited for waiver of demurrage on export cargo not shipped as the KPT was in no way responsible for non-effecting of the shipment by the shipper concerned.

(ii) M/s. Liladhar Pasoo Forwarders Private Limited on behalf of M/s. Amira Foods (India) Limited filed a special civil application in the High Court of Gujarat (Ahmedabad) for,

(a) not allowing 15 days free period; and,

(b) non granting of 50% rebate in demurrage charges for export cargo.

(iii) The Gujarat High Court vide its order dated 17July 2000 quashed the bills raised by the Port and set them aside with a liberty to the KPT to issue a notice under Section 56 of the MPT Act, 1963, and, thereafter, give an opportunity of being heard to the petitioner and decide the matter in accordance with law.
(iv). In compliance with the order of the High Court of Gujarat, a show cause notice was served on 4 August 2000, under Section 56 of the MPT Act, 1963 to M/s. Liladhar Pasoo Forwarders Private Limited demanding a difference of demurrage charges amounting to Rs.43,37,760/-.. Certain objections were raised by M/s. Liladhar Pasoo Forwarders Private Limited on the show cause notice which are under examination.

(v). In view of the matter already proceeding in the High Court, the TAMP may advise M/s. Amira Foods (India) Limited not to attend the personal hearing so as to avoid legal complications of any nature.

5.1. A copy of the comments received from the KPT was forwarded to M/s. Amira Foods India Limited for further comments.

5.2. M/s. Amira Foods (India) Limited, vide their letter dated 13 September 2000 have reiterated their earlier comments. They have made the following further comments:

(i). They have approached the KPT several times for waiver demurrage charges.

(ii). The KPT has also turned down the directions given by the MOST.

(iii). They were left with no option but to file a case in the Gujarat High Court since the KPT threatened to stop its services.

(iv). They firmly believe intervention of the TAMP will help in resolving the matter once for all.

7.1. A joint hearing in this case was held on 16 September 2000 at Kandla. During the joint hearing, the following submissions were made:

**M/s. Amira Foods (India) Limited**

(i). They filed a case in the High Court and the order has been passed by the court. The case is closed and there is no bar to the Authority to consider the case.

(ii). They are the affected party and they have chosen to go to TAMP. The High Court order is for providing relief to them.

(iii). They were not aware of the TAMP earlier. Otherwise they would not have gone to the High Court.

(iv). They assured that they would forgo action on the High Court order on their part if the Authority considers their case.
Kandla Port Trust (KPT)

(i). Pursuant to the Order of the High Court, the case is being processed by the KPT.

(ii). The High Court has given the Port, a right to decide afresh which cannot be extinguished by TAMP.

(iii). There will be no disruption in services until the cases disposed of.

7.2. The following decisions were taken in the joint hearing:

(i). The KPT will file a specific interlocutory objection.

(ii). The Authority will pass a formal order on the preliminary objection so raised by the KPT.

(iii). The applicant is required to furnish a letter explaining why they did not approach the Authority earlier as also stating that they will not be pursuing the other case pending before the KPT.

8. M/s. Amira Foods (India) Limited vide their letter dated 18 September 2000 confirmed their submission made during the joint hearing that they were not aware of this Authority earlier and hence they had approached the High Court. They have also stated vide their letter dated 19 September 2000 that the only matter pending with the KPT is the personal hearing as directed by the High Court and they are ready to forgo it and submit to the jurisdiction of the Authority to decide the matter.

9. With reference to the totality of information collected during the processing of this case and the preliminary objections raised by the KPT about maintainability of these proceedings before the Authority, and based on a collective application of mind the following position emerges:

(i). The KPT was required at the joint hearing to file a specific interlocutory objection in writing with reference to which this Authority could pass a formal order. The KPT had agreed to do so immediately so that this case could be taken up for consideration in the Authority’s meeting on 26 September 2000. The KPT has not filed any such written objection. Nevertheless, this Authority proceeds with consideration of this case with reference to their pleadings at the joint hearing as also their (earlier) communication dated 9 September 2000.

(ii). The Applicant-Firm does not appear to be playing ducks and drakes with the legal process, as alleged by the KPT, by approaching one
legal forum or another apparently for seeking redress but effectively stalling justice. Their explanation that they were not aware of the TAMP forum is quite convincing. Admittedly, seeking redress in a Court of Law is more expensive and more time-consuming. There is no reason why a litigant will opt for that when a cheaper and quicker remedy is available. The KPT has not also shown that there is any particular reason for the Applicant-Firm to do so.

(iii). The KPT allegation that the proceedings entertained by this Authority amount to interference with the legal process initiated by the Hon’ble High Court order is not tenable. The fact of the matter is that the Hon’ble High Court has passed a final order and closed the case. In other words, there is no pendency of proceedings before the Hon’ble High Court or pursuit of process directed by it.

(iv). In the case before the Hon’ble High Court, the Applicant-Firm was the aggrieved party. The Hon’ble High Court decided the case in their favour. Notwithstanding this (favourable) decision, upon getting to know about the existence of a forum like this Authority’s, they have chosen to approach us for relief. It is not clear why the KPT feels aggrieved by this move.

(v). It is relevant here to recognise that the Applicant-Firm has assured at the joint hearing (and, subsequently, followed it up with a written confirmation) that, in the event of their petition being entertained for consideration by this Authority, they will forgo action on the High Court order in their favour.

(vi). The High Court order in reference has neither given a directive about any particular course of action nor has it given any special relief to the KPT. That being so, there can be no hurdle arising from the said High Court order to this Authority’s consideration of this case on its merits.

(vii). Notwithstanding the points made about the maintainability of such proceedings before this Authority from a legal point of view, an issue of factual significance has nevertheless to be recognised. And, that is about the cause of action. In this case, the Applicant-Firm’s objection is to the bills raised by the KPT. These bills have been quashed by the Hon’ble High Court. In other words, as of now, there is no ‘bill’ in existence which can be objected to by the Applicant-Firm.

It is a fact that, subsequent to the High Court order, the KPT initiated proceedings afresh under Section 56 of the Major Port Trusts Act. But, what is in existence now thereunder is only
a ‘notice’ specifying an amount to be paid. After giving a hearing to
the party, the Board of Trustees has to ‘determine’ the amount
due. Only then can it be said to amount to a bill claiming the amount
from the party concerned. As of now, therefore, the Applicant-Firm
is not under obligation to pay any amount to the KPT; and, there
is, therefore, no claim of the KPT for them to object to.

(viii). Possibly, it is with reference to this aspect of the case that the KPT
has alleged that any proceedings before this Authority will amount to
extinguishing a right given to them by the Hon’ble High
Court. Although this contention of the KPT is legally
misconstrued, as analysed earlier in this paragraph, in view of the
factual position described about the lack of cause of action, this
Authority does not like to entertain this case at this stage.

(ix). The Applicant-Firm had expressed an urgency for redress in this
case citing a threat by the KPT to stop services failing immediate
payment of dues. This situation does not exist anymore. The KPT
has assured that, in view of the High Court order, there will be no
disruption in services until the case is disposed of.

(x). The order in reference of the Gujarat High Court was passed on 17
July 2000. The Applicant-Firm’s application to this Authority was
addressed on 24 July 2000. It is a mistake on their part not to have
referred to the High Court order in their application. Had they done
it, they could have been advised at that stage itself to approach this
Authority only when there was a cause of action.

11. In the result, and for the reasons given above, this Authority hereby
decides not to entertain these proceedings further at this stage.

(S. Sathyam )

Chairman

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