Tariff Authority for Major Ports

NOTIFICATION

In exercise of the powers conferred by Section 48, 49 and 50 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. Asia Shipping Services relating to a claim of penal interest on delayed refunds made by the Kandla Port Trust, as in the Order appended hereto.

(S. Sathyam)
Chairman

Case No. TAMP/56/2000 - KPT

M/s. Asia Shipping Services ... Applicant

Vs.

The Kandla Port Trust ... Respondent

ORDER
(Passed on this 26th day of September 2000)

This case relates to a representation from M/s Asia Shipping Service relating to a claim of penal interest from the KPT on the withheld amount and / or delayed payment.

2. M/s Asia Shipping Services have submitted their representation seeking relief on the basis of this Authority’s Order dated 4 February 2000 relating to payment of penal interest @ 24% per annum on delayed payments / delayed refunds equally applicable for both users as well as Major Ports.

3. The salient points of the representation made by M/s Asia Shipping Services are given below:

(i). The KPT had withheld its refunds due on vessels sailed from the Port from 1995 onwards inspite of their repeated request.
(ii). The KPT should have refunded the surplus amount once the vessel sails from the Port. Even after receipt of the Order dated 4 February 2000 passed by the TAMP, the process of refund was delayed up to 24 March 2000. The cheque for refund amount was issued on 31 March 2000 ignoring the interest due from 1995 onwards or from the date of final marine dues bills for concerned vessels.

(iii). The KPT denied interest payment merely on the ground that refund application was in conformity with neither the TAMP’s Order nor the FA & CAO’s circular. This is not correct as the refundable amount was confirmed and / or sanctioned on 24 March 2000. On 24 March 2000 no formalities were pending; hence, payment could have been arranged on that date.

(iv). The KPT was aware of the Order; and, hence, within a period of 30 days, the old refunds for the year 1995 and 1997 could have been finalised much earlier than 24 March 2000.

(v). The interest accrued on Rs.1,47,321/- for seven days from 24.3.2000 to 31.3.2000 may be paid.

4. The comments received from the KPT on the representation from M/s Asia Shipping Services are summarised below:

(i). M/s Asia Shipping Services is a regular port user and maintaining a traffic deposit account for various Port services. The party applied for refund of the balances available at their account without furnishing any details thereof pertaining to the period from 1991 onwards vide their application dated 24 November 99.

(ii). On a request made by the KPT to furnish the details, M/s Asia Shipping Services had submitted on 27 January 2000 a statement of claim for the period from 1991 onwards. On scrutiny it was observed that all the claims were adjusted for the future services excepting five voyage accounts amounting to Rs.1,47,231/- pertaining to the period from 1995 onwards. The claim was accordingly processed and a cheque was issued on 29 March 2000. The cheque was collected by the party on 31 March 2000.

(iii). The request of the party for payment of interest for the period from 24 March 2000 to 31 March 2000 i.e for seven days does not appear to be justified looking to the fact that the balances were accumulated in the deposit account as a running account and when the party had approached for refund the same had been finalised within a reasonable time on production of relevant documents.
5. M/s Asia Shipping Services has submitted its observations on the comments from the KPT which are summarised below:

   (i). It is not correct that a traffic deposit account is maintained. They arranged vessel-wise advance deposits.

   (ii). It is not correct that one vessel credit balance is adjusted in next coming vessel. They do not have much volume of work and always expect the KPT to refund the balance amount.

   (iii). The cheque was not collected but handed over only on 31 March 2000.

   (iv). If the application was finalised prior to 24 March 2000, then the issue of the request for interest would not have arisen.

6. The Gandhidham Chamber of Commerce & Industry (GCCI) has also submitted a representation relating to penal interest on delayed payments by the KPT. The GCCI has stated that the KPT has issued a circular stating that the interest payment on delayed refunds will be subject to the condition that the documents/refund application are complete in all respects. The GCCI is of the opinion that this addition will defeat the very purpose of the Order issued by the TAMP.

7. In its reply to the representation of the GCCI, the KPT has stated that in order to verify the genuineness of a refund claim, many documents are required from a user along with the refund application. Unless all the required documents are attached and complete in all respect, no action can be taken to process a refund claim. The clause added in the circular also mean that the refund application has to be submitted within the time limit prescribed under Section 55 of the MPT Act 1963. The KPT opined that the clause will also prevent any possible misuse of the Order.

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

   **M/s Asia Shipping Services**

   (i). The order of the TAMP dated 4 February 2000 relating to payment of penal interest came into force on 24 March 2000.

   (ii). They are asking for interest only for the delay after the Order came into effect.

   (iii). They are not claiming for any retrospective refunds under our order.
(iv). Payment was made by the KPT on 31 March 2000. There was delay of seven days. The KPT should pay interest for those seven days.

(v). The KPT did not give them the facility of carry forward of balance in their account.

Kandla Port Trust (KPT)

(i). The KPT was charging only 18% interest. But with effect from 24 March 2000 they started considering 24% interest per annum for all outstanding. They did not go for retrospective application. They applied this only on new arrivals.

(ii). There were delays in recovery of old amount due to the Port also. But they have not charged 24% in case of such old recovery.

(iii) If they make an exception in this case of M/s Asia Shipping Services, then they will have to consider it for all. They have not made any discrimination.

9. With reference to the totality of information collected during the processing of the case, and based on a collective application of mind, the following position emerges:

(i). The Applicant and the KPT have advanced their respective arguments in support of the processing of refund claims pertaining to the period prior to 24 March 2000. The Applicant has, however, claimed interest on the delayed refund of their claim for a period of 7 days starting from 24 March 2000 arguing that the Authority’s Order in this regard had come into force with effect from that date. That being so, the question to be decided is whether penal interest is payable for the alleged delay of 7 days from 24 March 2000 caused by the KPT.

(ii). Prior to the Authority’s Order dated 4 Feb. 2000, there was no provision for payment of interest by the KPT to port users in case of amount withheld / delayed refunds by the Port.

(iii). It is to be recognised that the intention behind the Order is to prescribe a uniformity of penal interest payable bothways by port users as also by the port trusts. In other words, the prescription is to provide a level playing ground for both the sides relevant to any transaction.
(iv). The KPT has confirmed implementation of the Authority’s Order with effect from 24 March 2000. However, the KPT has indicated that, to avoid complications, it has implemented the Order prospectively from the cases arising out of vessels berthed on or after 24 March 2000. It is noteworthy that the KPT has also foregone its claim to levy penal interest receivable by it on all outstanding amounts arising out of vessels sailed out prior to 24 March 2000.

(v). The KPT has implemented the Order in its true spirit. In any transition period, it may be logical to allow some lead-time for the implementing agency to adjust to the changes. Viewed in this perspective, the 7 days’ delay in remitting the payment to the party deserves to be condoned.

(vi). The GCCI representation against the inclusion of certain conditions by the KPT for payment of penal interest on delayed refunds appears to be without any merit. The arguments of the KPT for inclusion of a condition that the interest payment on delayed refunds will be subject to the documents / refund applications are complete in all respects appears to be reasonable and strictly in accordance with this Authority’s own prescription. The Port can process the refund claims only when such claims are complete in all respects. However, it will be fair on the part of the KPT if it notifies the Trade Users about the formalities for completing the refund and also the list of documents to be submitted along with the refund claims.

10. In the result, and for the reasons given above, the Authority rejects the representation made by M/s. Asia Shipping Services.

(S. Sathyam)

Chairman