Tariff Authority for Major Port

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 of the Mumbai and Nhava-Sheva Ship-Intermodal Agents’ Association to modify the application of Authority’s Order dated on 10 November 1999, relating to heavy lift charges on packages weighing over 20 MT at the Mumbai Port Trust, as in the Order appended hereto.

( S. Sathyam )
Chairman

Case No. TAMP/40/2000 – Misc.

The Mumbai and Nhava-Sheva Ship-Intermodal Agents’ Association … Applicant

ORDER

( Passed on this 26th day of September 2000 )

This case relates to a representation made by the Mumbai and Nhava-Sheva Ship-Intermodal Agents’ Association (MANSA) requesting to modify this Authority’s Order dated 10 November 1999 relating to ‘heavy lift charges’, as implementation of the above order is impractical in the Mumbai Port.

1.2. The MANSA has pointed out the limitations of the existing floating crane of the Mumbai Port Trust (MBPT) and justified handling of cargo using ship’s cranes. The MANSA’s objection is regarding the prescription of 50% heavy lift charges, when ship’s derricks are used inspite of the availability of Port Trust’s heavy lift cranes.

1.3. It has been brought out that with the implementation of the Order dated 10 November 99, the cost of handling steel cargo at the Mumbai Port will go up by a minimum of US$ 5 per MT. The MANSA has anticipated that this will result in the diversion of cargo to other ports like JNPT, Kandla, Mormugao, where no floating crane is available and, therefore, 50% heavy-lift charges are not applicable.
The MANSA has requested the Authority to rescind the above mentioned Order. It has also requested the Authority to hold the implementation of the said Order in abeyance, in the meanwhile.

The Federation of Ship Agent’s Associations of India has endorsed the representation of the MANSA.

The MBPT Scale of Rates provides for charging heavy lift charges (for use of floating crane) for packages weighing more than 30 T limit. No charges for using ship’s derrick is prescribed in the MBPT Scale of Rates. The MBPT was advised vide our letter dated 8 June 2000 to keep in abeyance operation of the TAMP’s Notification No. TAMP/85/99-Misc. dated 1 February 2000 till a final decision is taken by this Authority on the representation of the MANSA.

In accordance with the procedure adopted by the Authority requiring consultation with concerned Port users/ representative body of Port users, a copy of the representation was sent to MBPT, INSA, SCI and IMC for their comments.

The comments received from them are summarised below:

**Shipping Corporation of India (SCI)**

(i). The Mumbai Port as of date has only one floating crane which is available only during the day shift. Further, this floating crane is not available on Sundays and Holidays.

(ii). The cargo of 20 tonnes or more, when discharged from a vessel by the floating crane, is loaded on the deck of the floating crane or on a flat top barge. Subsequently, the cargo is off loaded on the wharf.

(iii). Easy availability of the floating crane at the berths near the Turning Basin is rare.

(iv). The SCI has also given the financial implication of heavy lift charges. It has pointed out that as against the charge of Rs.1100/- per 25 ton steel coil, the agents are required to make a payment of Rs.5500/-, if TAMP notification is implemented.

(v). Levying of charges on heavy lifts should be abolished to encourage cargo inducement at Mumbai.

**Indian National Shipowners Association (INSA)**

(i). The INSA fully supports the views of MANSA.
(ii). The heavy lift charge is workable if an occasional heavy lift package is moved by an odd ship. One Port crane cannot possibly handle large consignment of heavy lift. If derricks are not allowed to be used or premium is put on their use, it will act as a speed breaker.

(iii). As TAMP Order is applicable to all major Ports, situation explained by MANSA will also apply at other Ports.

(iv). The Order needs to be reconsidered.

5.1. A joint hearing in this case was set up on 15 September 2000 at the MBPT. During the joint hearing, the MBPT indicated that it did not have the concept of heavy lift and requested for exemption from the order. The MANSA requested that if the equipment was not available when required, even the 10% charge levied by the MBPT should not apply. The MBPT agreed that in such a situation, there would be no charge.

5.2. At the time of joint hearing, the MBPT gave a written submission agreeing with the representation of the MANSA that implementation of the Authority’s order dated 10 November 1999 would be detrimental to the port.

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

(i). The impugned Order was passed by this Authority more for prescribing a common pattern in all the port trusts for introducing the concept of heavy lift. In other words, the system prescribed in the said order is to come into operation only if the port trust has or is to introduce the heavy lift arrangement. The provision stipulated in the order will not necessarily apply even in the absence of such an arrangement.

(ii). The MBPT has stated that it does not have the concept of heavy lift in the port. This statement is not borne out by facts. As stated in paragraph (3) above, the MBPT Scale of Rates does contain a provision for heavy lift charges.

(iii). Ordinarily a port is not expected to levy a fee for a service/facility not provided/extended. This is in line with the basic requirement of tariff prescription conforming to the principle of *quid pro quo*.

But, where some users expect a port to provide a particular service/facility and some others do not want it to, a port has to decide to act according to the convenience of the former. Having done that, the port will have to take action to recover the cost of the investment. It is in this backdrop that, in such cases, a concessional
tariff is levied even if the service/facility is not availed of. The concessional tariff on ‘heavy lift crane’ falls in this category.

What is relevant here is the interest of the port to recover its investment. This Authority’s order in reference was passed to introduce common acceptance of this idea and standardise the tariff therefor.

In the MBPT, this idea is already in vogue; and, a 10% concessional charge is levied in such cases. The MBPT is satisfied with this provision to protect its interests. That being so, the 50% levy prescribed in this Authority’s order will only adversely affect users. Hence, the request for retaining the existing provision.

This argument is found to be valid and acceptable. The incidence of the impugned Order therefore deserves to be modified in the MBPT context.

(iv). The MBPT Scale of Rates prescribes a 10% (notional) cranage charge in cases of heavy lifts by cranes and gears which do not belong to the port. The MANSA has argued that, if the equipment is not available when required, even the 10% charge shall not apply. At the joint hearing MBPT has also agreed to this prescription.

This Authority’s Order dated 10 November 99 prescribing heavy lift charges also stipulates that these charges shall not be levied in case heavy lift cranes though requisitioned but could not be spared by the Port for reasons like maintenance, overhaul, repairs, non availability of the crane because of being hired by another party, etc and when the heavy lifts have to be landed or shipped necessarily by the use of the ship’s own derricks.

This Authority finds it logical to extrapolate this provision for not levying the 10% cranage charges when port’s floating crane is not used. However, if private crane is brought in by parties even when the port crane is available, the 10% crane charge shall be leviable.

7. In the end and for the reasons given above, this Authority decides to vacate the interim stay granted in this case earlier and approves the following:

(i). This Authority’s order dated 10 November 99 is modified in its application at the MBPT to the extent that the existing provision about levy of a 10% (notional) cranage charge, in cases of non-use of the port’s equipment, will remain in force in place of the 50% charge prescribed by the impugned order.
(ii). The MBPT shall not levy the 10% (notional) cranage charge in cases of heavy lifts by cranes and gears which do not belong to the port, if the port’s heavy lift cranes could not be spared for reasons like maintenance, overhaul, repairs, non-availability of the crane because of being hired by another party, etc. and; consequently when the heavy lifts have to be landed or shipped necessarily by the use of the ship’s own derricks or hired private cranes.

8. The MBPT is directed to incorporate the above decisions in its Scale of Rates.

(S. Sathyam)

Chairman

[ List of Ports | List of Orders ]