

No. 75

New Delhi, the 29th May, 2000

TARIFF AUTHORITY FOR MAJOR PORTS

NOTIFICATION

No.TAMP/74/99-Misc. - In exercise of the powers conferred by Sections 48 and 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the representation made by the Western India Shippers' Association seeking statutory regulations of Container Detention Charges by this Authority, as in the Order appended hereto.

SCHEDULE

Case No. TAMP/74/99 – Misc.

Western India Shippers' Association

...

Applicant

ORDER

(Passed on this 12th day of May 2000)

This case relates to a representation made by the Western India Shippers' Association (WISA) about fixation of Container Detention Charges (CDC). The WISA has pleaded that reasonable CDC should be fixed by this Authority in the light of Section-48 of the MPT Act.

2. The CDC is the element of charge levied on the importer / consignee by the shipping lines as a compensatory charge for those containers which are detained beyond the free period allowed for various reasons such as delay in submission of Bill of Entry, delay in customs examination, delay in filling necessary documents, or any other such reasons. The following components form the CDC:

- (i). Lease hire of containers including damages protection plan and survey / maintenance.
- (ii). Administration, computer inventory control, pick up/drop off transportation, lift on/lift off, etc.
- (iii). Repositioning cost.
- (iv). Ground rent.

3. Presently the CDC is not regulated by any statutory body as no clear statutory provision exists for undertaking such an exercise. In its representations, the WISA has stated that the India Pakistan Bangladesh and Ceylon Conferences (IPBCC) prescribe the tariff to be implemented through the KARMAHOM Conference in India for recovery of CDC. The quantum of charges is decided by the Conference without notice to or consultation with any users.

4. The KARMAHOM Conference has revised the levy of the CDC charges three times since 1985. The first revision was in June 1988; the second revision was in December 1994; and, the third revision was in March 1995. The importers maintain the stand that the shipping lines shall not charge as CDC any amount in excess of the one recommended by the Govt. and allowed under the RBI circulars. On the other hand, shipping lines justify enhancement of rate of CDC by citing the increase of ground rent by the Port Trusts since 1985 as the main reason. In addition, heavy repair and maintenance charges of containers and the cost of repositioning of empty containers, etc., also compel them to increase this charge. The cost element of the CDC consists of components remittable abroad to principals of the shipping agents and components expendable in India. The component of lease hire and part of the Administration and repositioning charge, etc., are remittable abroad.

5. With the lack of clear statutory power for any Government body/ Authority to determine the rate of CDC, there is always a dispute in this regard between shippers and the shipping lines. In the past, the Government had appointed various Committees to look into the aspect. However, no agreed decision has emerged so far.

6. In this background, the WISA has requested this Authority's intervention to fix reasonable Container Detention Charges to solve the long-standing problems of the shippers to help them compete in the international market.

7. The Director General of Shipping had constituted a sub-Committee to review the 1985 Report on Container Detention Charges.

8. While forwarding the proposal of the WISA, we have sought the comments on the following issues also from various users, representative body of the port users and the Port Trusts / Terminals like the CHPT, NSICT, PSA SICAL, JNPT and the MBPT:

(i). Whether you agree that CDC is to be regulated by a Statutory Authority like the TAMP.

(ii). Whether CDC can be considered as a part of the THC.

- (iii). Whether TAMP can regulate CDC under the existing legal provisions I.e., under Section 48 of the MPT Act. If so, whether all the components of the CDC can be covered; and, if not which are the components falling outside the purview of the TAMP.
- (iv). Any other suggestions on the WISA proposal to regulate the CDC.

9. The comments received from various users organisation are summarized below:

Indian Merchants Chamber (IMC)

- (i). We agree in total and supported the contentions of the WISA.
- (ii). The CDC shall be regulated by a statutory Authority like the TAMP.
- (iii). CDC shall not be considered as a part of the THC.
- (iv). The TAMP is in a position to regulate the CDC under existing legal provisions of the MPT Act of 1963. All components even if they fall outside the purview of the MPT Act, shall be regulated by the TAMP.

The Bombay Custom House Agents Association (BCHAA)

- (i). The charges recovered unilaterally by Steamer Agents viz. the THC and the CDC be addressed by the TAMP as provided under the provisions of the MPT Act.
- (ii). The IPBCC and KARMAHOM unilaterally decide the THC and CDC payable. The trade bodies have never been consulted. Tariffs notified without any legal sanctity are being imposed.
- (iii). As the CDC becomes payable by the trade due to Containers being detained within the Port premises, the same can be addressed by the TAMP.
- (iv). The CDC and THC are reimbursement of actual costs incurred. However, Shipping Lines and Steamer Agents are recovering more than 100% to 150% of the actual expenses incurred.
- (v). The TAMP must regulate the CDC, THC, as well as other charges recovered by service providers operating within the Port premises if not already controlled by another Government body.
- (vi). The CDC is not part of the THC.

- (vii). Under the existing legal provisions of Section 48 of the MPT Act of 1963, the TAMP is the only competent authority which can approve and notify the tariff to be levied by the shipping lines within the port and its CFS/nominated areas from where cargo is permitted to be examined by Customs and clearance effected.
- (viii). The shipping lines are recovering the on-board stevedoring charges that are part of the sea freight as one of the components of THC. This is not right, as it results in double recovery of on-board stevedoring charges from the Importers and Exporters.

Shipping Corporation of India (SCI)

- (i). The contention that the CDC is not being regulated by any statutory body is not correct. In the early 80s, the MOST had constituted a high powered Committee under the aegis of the DG(shipping). The Committee submitted its Report in 1985 identifying cost of CDC components. The recommendations were accepted by the lines and trade bodies.
- (ii). Since 1985, MBPT revised their storage charges three times without consulting either the trade or the lines.
- (iii). The ground rent prescribed at the JNPT is very high. This is not considered or taken into account by the Conference for structuring the CDC. In 1995, the JNPT further revised its ground rent.
- (iv). Penal slabs for ground rent have been introduced by Ports to ensure speedy clearance. Shipping Lines shall not be precluded from introducing the same provisions in their CDC to mitigate their losses from conversion of their earning assets (containers) into non-performing assets.
- (v). Port charges have not remained stagnant between 1985-97; these have increased manifold. On the basis of continued pressure from the trade, the DG(Shipping) constituted another Committee. The Committee submitted its Report in 1998. Despite having some reservations, the SCI and other shipping lines accepted the recommendations contained in the Report.
- (vi). We do not agree with the proposal to re-open the Report which has been finalized by a Committee headed by a neutral body following a process of due consultation.

- (vii). In principle, we do not agree for TAMP to regulate CDC as these are penal charges of shipping lines so that containers belonging to them are not utilized as 'Godown' by the trade. Freight and other ancillary charges levied by shipping lines do not come under the MPT Act nor do they come under the TAMP.
- (viii). The CDC cannot be considered as part of the THC. According to IPBCC tariff definition, THC is that charge payable by the merchant in respect of an import / export FCL container for its reception at the terminal, its storage and its presentation to the vessel for loading and reception from the vessel after discharging. It must be noted that these are the functions of the terminal operators (Port Trusts) and not that of carrying lines. The THC is applicable to all containers on both import/export whereas the CDC is applicable only to those import containers that are not taken delivery of by the importers within the stipulated free time given by the lines.
- (ix). The TAMP, pressurized by the trade, must not reduce the CDC as this act will only encourage the trade to delay clearance of containers and use them as 'godowns'.
- (x). The Government of India needs to address the main issues like cumbersome Customs procedures, lack of warehousing facilities, etc., which cause delay in clearance of cargo from the ports.

KARMAHOM Conference

- (i). We support the views of the SCI. The TAMP cannot regulate CDC under existing legal provision of Section 48 of MPT Act.
- (ii). The core problem is the inability/unwillingness of the Ports to fulfill their statutory duties and clear/unstuffed cargo within the permitted time.

Container Shipping Lines Association

We endorse the points made by the KARMAHOM Conference.

Jawaharlal Nehru Port Trust

It is doubtful whether the TAMP can regulate CDC within the existing legal provisions under the Section 48 of MPT Act. Legal opinion may be obtained whether Section 48 (i) (e) and Section 48(ii) can be made applicable and interpreted to empower the TAMP to regulate the CDC. Otherwise, it is proposed that the matter may be

referred to an expert body like BICP or NPC to go into the recommendations of the earlier Committee.

Indian National Shipowners Association

- (i). We fully support the comments put-forth by the SCI.
- (ii). Trade keeps pressing for reduction of the CDC, whereas they have full scope to pay no CDC if they can organize to clear cargo within the free days allowed by the shipping lines.

Director General (Shipping)

- (i). High rates of the CDC collected by the shipping lines from the shippers have been a matter of serious concern which shall not be left to the market forces for decision.
- (ii). We agree with the view and the scheme prepared by the Ministry of Commerce for the regulation and reduction of Container Detention Charges and entrusting the job to TAMP.

The Customs Licensed Agents Association (Tuticorin)

- (i). We are not particular about which agency will regulate the CDC, but the CDC must be regulated.
- (ii). THC is considered a separate entity.
- (iii). Immaterial and regardless whether regulation is covered under Section 48 of the MPT Act, if it is boldly implemented by the TAMP, the lines will comply.

MAERSK India Limited

- (i). No statute prescribed any tariff restrictions on foreign shipping companies operating in India under general exemption granted by the Foreign Exchange Act 1973 and the CDC is not to be regulated by the TAMP.
- (ii). The CDC cannot be considered as a part of the THC.

P&O Ports India Private Limited

- (i). A statutory Authority cannot regulate the CDC. The CDC is charged by shipping lines after extending reasonable duration of free

days to cover port stay, de-stuffing and return of container to shipping lines.

- (ii). The CDC does not form part of the THC.
- (iii). The TAMP cannot regulate the CDC under the existing legal provisions.
- (iv). The WISA should approach the shipping lines or the KARMAHOM Conference for review of the CDC.

Madras Chamber of Commerce and Industry (MCCI)

Lobbying with statutory or regulatory authorities such as the TAMP so as to unfairly use their influence is to be abhorred. This is all the more reason when such regulatory authorities are not legally empowered in issues of contractual nature. Such an interference can set bad precedence and will lead to further requests for regulatory authority to get involved in other contractual issues such as ocean freight charges and “additional”.

Reserve Bank of India

- (i). We agree that it is to be regulated by a statutory authority.
- (ii). The Shipping Companies may be directed not to charge anything in excess of the prescribed rate. Alternatively, the charges may be left to be decided by the market forces.
- (iii). The CDC cannot be considered as a part of the THC.
- (iv). The MOST is the competent authority to decide whether TAMP is empowered.
- (v). In case of the collection of CDC in excess of recommended rates, we will consider repatriation of the CDC to the extent of recommended rate for the purpose and balance collection for local use without blocking any operation thereof.

Central Warehousing Corporation (CWC)

- (i). The CDC should be regulated by a statutory authority like the TAMP.
- (ii). The CDC can be considered as part of the THC.
- (iii). The TAMP has jurisdiction to regulate the CDC.

- (iv). To avoid the accrual of CDC organization like us can be given a mandate to de-stuff a consignment and keep them on a long time basis for which they can be paid storage charges for the cargo which will definitely result in decrease out-go of foreign exchange towards the CDC.

Tuticorin Chamber of Commerce and Industry

By duplicating one more statutory authority and bringing the CDC will not solve the problem. The legal snag is that the MPT Act will regulate the CDC within the port and not outside the port.

PSA SICAL

The CDC shall be left to the market forces and shall not be regulated.

Chennai Port Trust

- (i). The TAMP is the correct statutory authority to regulate the CDC.
- (ii). The CDC cannot be considered as a part of the THC.
- (iii). Many of the components are not listed under Section 42(i) of MPT Act and hence falls outside the purview of the Section 48 of MPT Act. Suitable amendment needs to be made.

Bombay Stevedores Association

No comments.

State Trading Corporation

No comments.

10. During the course of the joint hearing held on 6 March 2000, the MBPT gave a copy of their letter No.Secy/G/GM-MS/1408 dated 11.02.2000. They have made the following comments:-

- (i). The CDC is at present un-regulated. The shipping lines have complete freedom to the amount and frequency of upward revision. This has been an area of dispute between shippers and shipping lines as they have no voice in deciding the CDC. The CDC affects costs of imports and exports and competitiveness of a product. Therefore, there is a ground to regulate the CDC. The Tariff

Authority for Major Ports is the most suitable agency to regulate the CDC imposed by the shipping lines.

- (ii). The CDC may be included as a part of the Terminal Handling Charges. The CDC is recovered from the shippers as rent for use of containers. The CDC may be decided by Tariff Authority for Major Ports which can be recovered by the shipping lines towards use of containers by the shippers.
- (iii). The CDC component in THC can be fixed considering the average dwell time at the port and free days available so that the shipper is well aware of the total cost if container is cleared within the defined period and the per day cost thereafter.
- (iv). The CDC can be regulated under Section 48 of the MPT Act. Under Sub-section 2 of 48 *ibid*, different scales and conditions can be framed for different classes of goods and vessels. With a view to making the CDC realistic, all the components of CDC levied by the shipping lines may be included while fixing the CDC.

11. The Mumbai and Nhava-Sheva Ship-Intermodal Agents' Association (MANSA) also presented a written submission during the joint hearing. The points made by them are summarised below:

- (i). The rates of CDC are prescribed and known to the trade.
- (ii). The CDC is not levied if the cargo is cleared within five free days. Almost 25% of the cargo is released within the free days
- (iii). The CDC is charged slab-wise with higher rates applicable, if the delay is longer.
- (iv). The CDC and THC are always an argument between the trade and the shipping lines world over and the Government Authorities never interfere on these issues.
- (v). Since shipping is a free entry/exit industry and is not licensed, there cannot be any regulation on its tariff.
- (vi). The Tariff Authority for Major Ports has no jurisdiction on the CDC tariff.

12. The submission made during the joint hearing at the MBPT by various parties are summarised below:

Western India Shippers Association (WISA) and Indian Merchants Chamber (IMC)

- (i). The recommendations made by the DG (Shipping) on the CDC in 1985 were accepted but further revision by the Lines have been unilateral.
- (ii). Another exercise was done on the CDC in 1997. However, no agreement could be reached between the Members.
- (iii). Since the shipping lines have cartelised and Tariff Authority for Major Ports has been set up to guard against monopolistic operations, the TAMP must intervene.
- (iv). Since containers are handled in Port area, Tariff Authority for Major Ports has a duty to intervene.
- (v). The lines have to issue a delivery order. Under that threat they have forced us to pay any rate for the CDC.
- (vi). The Cabinet Secretariat, the Committee of Secretaries, the MOST and Ministry of Commerce have recommended regulation of the CDC by the Tariff Authority for Major Ports.
- (vii). India is losing about \$250 million on CDCs. The Government is, therefore concerned. Tariff Authority for Major Ports must appreciate this.
- (viii). TAMP's orders on free days to start after containers reach the CFS will sort out the problems. But, this is not being followed.
- (ix). The shipping lines have violated the RBI instructions on the CDC that the lines shall not charge in excess of the prescribed rate.

Confederation of Indian Industry (CII)

- (i). The CDC must be commensurate with the service provided.
- (ii). The CDC is not THC.

KARMAHOM Conference

- (i). The CDC consists of certain components which are not port related.
- (ii). Except the ground rent, the other components of the CDC are not port related activities.

- (iii). This is a case of contract between the lines and the shippers. However, there is no compulsion on the consignee to detain the container.
- (iv). The CDC is not THC.
- (v). We are not a monopoly. Therefore, there is no reason for any special concern.
- (vi). UNCTAD Code of Conduct allows conferences to charge the CDC. India is a signatory to that convention.

Container Shipping Lines Association (CSLA)

- (i). The CDC is already regulated and is governed by a formula agreed upon some years ago by the trade and the Government.
- (ii). The CDC is not a monopolistic prescription, it is market regulated.
- (iii). We do not arm twist with reference to the power of “delivery order”. The shippers are free to go to any line. The terms and conditions of the delivery order are well known.

MANSA

- (i). The Japanese shipping Conference and the American Shipping Conference also do this. There is no interference by the respective Governments.
- (ii). There have been increases but, not arbitrary. The shippers willingly enter into a contract for every shipment.
- (iii) Tariff Authority for Major Ports has no jurisdiction over the CDC. As such, there is no case for regulation of CDC by the Tariff Authority for Major Ports.

MAERSK India Limited

We agree with the views of KARMAHOM Conference/CSLA/MANSAA.

SCI

There is no case for regulation of the CDC by the Tariff Authority for Major Ports.

NSICT

- (i). No statutory authority can regulate the CDC.
- (ii). The CDC is not THC.

CONCOR

We clear containers in 48 hours and do not add to delay.

CWC

- (i). LCL containers are de-stuffed immediately and empty containers are returned. However, FCL have to go to factory for destuffing.
- (ii). In other cases, after 60 days they destuff and return the containers.

CHPT

Let us all agree for a third party i.e. Tariff Authority for Major Ports to decide the reasonableness. The Act can be amended to regulated the THC.

MBPT

- (i). The CDC can be taken to be a part of the THC.
- (ii). The Tariff Authority for Major Ports must start regulating THC.
- (iii). Prescription of one rate for the CDC is not correct. It is to vary from case to case.
- (iv). 'Ground rent' is collected twice by lines – once for the THC and then for the CDC.

Director General (Shipping)

- (i). The Tariff Authority for Major Ports need not go too much into the legal charter. It can address the problem and try to resolve it.
- (ii). If containers are given by the port then, the CDC will come under the MPT Act. However, today containers are given by liners, it is their service.
- (iii). There is no monopolistic situation governing this problem.
- (iv). Organisations like the CWC, and the CONCOR also contribute to delay. They shall also share in the CDC. Someone must apportion the respective liabilities.

13. With reference to the totality of information collected during the processing of this case, the position that emerges for consideration is analysed below.

13.1.1. While inviting comments on the request for regulation of CDC, we had raised three specific questions as follows:

- (i). Whether CDC can be considered as a part of the THC.
- (ii). Whether CDC must be regulated by a statutory Authority like the TAMP.
- (iii). Whether TAMP can regulate CDC, wholly or partially, under the existing legal provisions.

13.1.2. As regards (i) above, whereas opinions both for and against the proposition have been received, the generality of response appears to be in favour of the latter. It is relevant here also to recognise that, out of the four components of CDC listed in paragraph (2) above, three are not port-related; only 'ground rent' is a port-related component. But, since the Shipping Lines levy a composite charge, it will be difficult to single out this component also for any kind of regulation.

13.1.3. As regards (ii) above, whereas opinion both for and against the proposition have been received, the generality of response appears to be in favour of some kind of regulation; but, this response is not specifically in favour of regulation by the TAMP. The reason for the response in favour of regulation appears to have been prompted by a lack of transparency in the fixation of CDC and, therefore, a consequential perception of unilateralism in this regard. (Significantly, besides the support from cargo-interests, this opinion has been endorsed by some port trusts and organisations like the Reserve Bank of India, the Director General of Shipping, and the Central Warehousing Corporation). The reason for the response that the regulation need not be by the TAMP appears to have been prompted by apparent gaps in the legal provisions on the subject. This becomes more explicit when the response for the third question is examined.

13.1.4. As regards (iii) above, predictably, the cargo-interests have sought to bring all the components of the CDC within the purview of Section 48 of the Major Port Trusts Act and, therefore, of the TAMP. But, the generality of opinion is to the effect that Section 42(1) and Section 48 of the Act will need to be amended to specifically cover the CDC components like lease hire, insurance, repair/maintenance, repositioning cost, administration and computer inventory control, etc. Plus and minus, this view appears to be more objective. In cases of such legal ambiguity and overwhelming doubt about jurisdiction, a Regulator is

expected to exercise restraint and err on the safer side. This logic is reinforced by the following further considerations:

- (i). The CDC is not part of freight; it has a 'penal' connotation.
- (ii). The CDC is not part of THC. The THC is relevant both to imports and exports whereas CDC is relevant only for imports.
- (iii). Container is a property of the Shipping Lines; it is leased to the shipper by them (and, not by the Port). CDC is a charge towards 'value of the property' and not a 'fee' for any 'service'.
- (iv). Most of the component-items of CDC are not covered by Sections 42 and 48 of the MPT Act. These Sections do not even make any reference to Shipping Lines.
- (v). The UNCTAD Code of Conduct reportedly allows Shipping Lines to charge CDC.
- (vi). This is a global feature apparently with no governmental intervention elsewhere. (The MANSA reference to unfettered action in this regard by the Japanese and American Conferences and about Governments elsewhere no interfering has neither been controverted by anyone nor has it been discounted by any citation of example to the contrary.)

13.2.1. Strangely, the initiative taken by the Director General of Shipping some years ago to develop a consensus about the component-rates has been cited by both the sides (viz. the shipping-interests and the cargo-interests) to buttress their arguments! The shipping-interests have argued that, since there is already a regulated rate structure, there will be no need to invoke the authority of the TAMP especially when its jurisdiction is in doubt. The cargo-interests have argued that the Shipping Lines, since they have already submitted to a regulatory process, cannot now seek to be beyond regulation; also, they have violated the earlier regulation through subsequent unilateral hikes in rates and have thereby exposed themselves to further regulation.

13.2.2. It has to be recognised in this context that the earlier intervention by the Director General of Shipping was in the nature of an administrative initiative. It cannot become a precedent for justifying a statutory intervention now. Any statutory intervention for regulation has to be specifically stipulated. Any ambiguity in the Statute, as earlier stated, ought to weigh against intervention.

13.2.3. What has been done earlier was more in the nature of an 'arbitration'. The intervention now demanded of the TAMP will be in the nature of an 'adjudication'. It is true that whereas consent of both the parties is necessary for 'arbitration', no such consent is necessary for 'adjudication'. But, as earlier stated, 'adjudication' has to be based upon unambiguous statutory stipulation.

13.3. In the light of what has been stated above, the allegation that the Shipping Lines are unilaterally increasing the CDC rates without any correlation to the expenses incurred and in total violation of the earlier regulation cannot be of any meaningful consequence to these proceedings. In the absence of any specific statutory stipulation, there can be no regulatory intervention to adjudicate the issue; and, in the absence of consent from both the sides, there cannot even be arbitration of verify the accounts beyond our shores to establish the reasonableness of the CDC rates.

13.4. The argument of the Applicant-Organisation that, in the absence of regulation of CDC, the country is losing \$ 250 million repatriated by the Shipping Lines is, in the given circumstances, more emotional than rational. This cannot be a reason for this Authority to interfere in the matter especially when it has no *locus standi* on the subject of foreign currency repatriation.

13.5. Likewise, the complaint of the Applicant-Organisation that the Shipping Lines are making a double recovery by including in THC 'on-board stevedoring charge' when it is a part of sea-freight will be of no relevance to these proceedings since this case relates to CDC and not to THC.

13.6. On behalf of the shipping-interests, it has been contended by the MANSA that the Bill of Lading is a contract between the Shipping Line and the Shipper; and, in the face of such a specific contractual arrangement governing each consignment, the shipper must be deemed to be estopped from objecting to CDC which forms an integral part of the Bill of Lading. The Applicant-Organisation has sought to negate this argument with the observation that the said contractual arrangement is between the foreign-exporter and the Shipping Line which is not binding on the Indian importer. This cannot be said to be a good argument from either side. Really speaking, a Bill of Lading may not be a contract at all. In strict legal terms, perhaps, it is recognised as an evidence of a contract and not as a contract *per se*. In any case, the contract between the (foreign) exporter and the (Indian) importer, even if it does not specifically deal with the shipping arrangement, has to be seen to implicitly endorse it.

13.7. The shipping-interests have sought to justify the charge on the reasoning that shipper tend to use containers as godowns thereby causing (avoidable) loss to them. Extrapolating the logic of this reasoning, it has further been contended that any reduction of CDC will accentuate the problem. It is not necessary for this Authority to go into the merits of this observation at this stage.

All that can be said at this stage will be that such a reasoning can be considered if the CDC is in the nature of a 'penal charge' to protect property rights; but, if CDC is in the nature of a THC, it has to abide by the principle of quid pro quo and conform to the requirements of the 'fee' being commensurate with the 'service/facility' provided. Be that as it may, the advice given by the shipping-interest that it will be better to operate (container) movements more efficiently so as to avoid delays in clearance of containers is valid.

13.8. In fact, raising this point about delays, the Director General of Shipping has pointed out that there are other parities (like the CONCOR and the CWC) who contribute to the delay and who must, therefore, share in the payment of CDC. This will undoubtedly lighten the burden of CDC on the shipper. But, how are the respective shares of delays of the various participating agencies to be decided? Since this will be a matter only of 'apportionment' and not of any 'regulation', this need not perhaps, wait till the legal issues are conclusively settle. It must be possible to install an administrative arrangement to do this apportionment based on estimation with reference to some logging system.

13.9. It is relevant in this context to refer to the Applicant-Organisation's observation: "TAMP's order about 'free days' starting only after containers reach the CFS will sort out the problem; but, it is not being followed". This condition was prescribed by this Authority in the case pertaining to the CFS at the Jawaharlal Nehru Port Trust. If this condition has really the potential of solving (or, at least, substantially minimising) the CDC problem, then, its application on a common basis to all the ports will be taken up by this authority for serious consideration. Notwithstanding the fact that the present case is being disposed of through this Order, this Authority will explore this possibility separately.

13.10. Another point that can be picked up from these proceedings for subsequent scrutiny separately arises from the Applicant-Organisation's allegation about double-recovery of ground rent. It has been alleged that 'ground rent' is recovered both in THC and CDC. Since CDC is not admitted for statutory regulation by this Authority, this issue may have to be settled only if and when the THC is taken up for regulation by us. When that happens, it will be possible for us to take the stand that no 'ground rent' will be admitted as a component of the THC if it is found to have been included as a component of the CDC.

14. In the result, and for reasons stated above, and based on a collective application of mind, this Authority finds the application of the Western India Shippers' Association, requesting for statutory regulation of Container Detention Charges by this Authority, to be unsustainable and rejects it accordingly.

S.SATHYAM, Chairman

[Advt./III/IV/Exty./143/2000]

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