

No.29

New Delhi, the 28th March, 2000

TARIFF AUTHORITY FOR MAJOR PORTS

NOTIFICATION

No.TAMP/10/98- Misc.- In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby sets out the correct legal position in respect of its power to prescribe Scale of Rates and Statement of Conditions for use of port properties as in the Order appended hereto.

Case No.TAMP/10/98-Misc.

ORDER

(Passed on this 15th day of March 2000)

1.1. This Authority is empowered by the Major Port Trusts Act (1963) to frame the Scale of Rates on payment of which and a Statement of Conditions under which any property belonging to the Board or in possession of the Board or in occupation of the Board or any place within the limit of the Port or Port approaches will be used for the purposes specified in Section 49 (1) *ibid*. A doubt arose in some quarters about this legal position. This Authority had, therefore, addressed all the Major Port Trusts, vide its communications No.TAMP/10/98-Misc. dated 4 January 99 and 24 August 99, explaining in detail the correct legal position.

1.2. The Mumbai Port Trust (MBPT) has not been convinced by our communications in reference. They have persisted in questioning the jurisdiction of this Authority to prescribe rates and conditions of leases of port properties outside the port area and port approaches. In the circumstance, we feel constrained to issue this order setting out the correct legal position in this regard.

2.1. The two provisions in the Statute basic to the issue in contention are Section 29 and Section 49. Whereas Section 29 *ibid* empowers this Authority to fix rates for all properties and assets vested in the Board, Section 49 deals with all categories of property used for the purposes given thereunder.

2.2. Under Section 29(a) *ibid*, all property, assets and funds, and all rights to levy rates vested in the Central Government or, as the case may be, any other Authority for the purposes of the Port immediately before ‘the appointed day’ shall vest in the Board.

2.3. Section 49 deals with the Scale of Rates and Statement of Conditions for use of property **belonging** to the Board. When a property is leased or let out, it is used by the lessee or hirer; but, the property continues to belong to the Board.

Sub-Section 1 of Section 49 empowers this Authority to frame the Scale of Rates on payment of which and a Statement of Conditions under which any property belonging to or in possession or occupation of the Board, or any place within the port area or the port approaches may be used for the purposes specified thereunder. These purposes are specified in Clauses (a) to (c). Clause (d), however, clearly stipulates any other use of any property belonging to or provided by the Board.

2.4. It is noteworthy that none of the relevant provisions in the Statute makes a distinction between properties situated within the port area or situated outside the port area. All that is relevant is that the property shall belong to the Board; or, it shall be in possession of the Board; or, it shall be in occupation of the Board; or, it shall be any place within the limits of the port area or the port approaches.

2.5. In this reckoning, it will be clear that the Statute empowers this Authority to fix the Scale of Rates and Statement of Conditions for use of any property belonging to the Board, wherever situated, and put to any use.

2.6. Had it been the intention of the Legislature that this Authority cannot fix rates/conditions for properties situated outside the port area, in the normal course, there would have been a provision to that effect in the Statute itself.

3.1. The MBPT has sought to rely on a judgement of the Hon'ble High Court of Bombay in the case *Jayantilal Dharamsi Vs Board of Trustees of Port of Mumbai*. It has to be recognized in this context that the said judgement was passed in 1990, i.e., with reference to the law as it existed prior to the amendments in 1997. Also, it has to be appreciated, the focus in the ruling cited was about references to be made to the Government under Section 34 *ibid*.

3.2. In the present context, however, the reference is to the jurisdiction of this Authority to prescribe rates and conditions. By virtue of the amendments made in 1997 to the Major Port Trusts Act (1963), this Authority has replaced 'the Board' for the purpose of Section 49 *ibid*. It cannot be the contention of any Major Port Trust that its Board of Trustees has jurisdiction only in respect of certain properties and not others; the Board of Trustees for any Trust has unquestioned rights over all its properties. Since this Authority has replaced 'the Board' in this context, *ipso facto*, it must be held to step into the shoes of the Board and inherit all the rights (enjoyed earlier by the Board) to the Trust properties for the purposes given in the Statute.

3.3. Section 34 *ibid* deals with the mode of executing a contract on behalf of the Board. It lays down when previous approval of the Board is required and when previous approval of the Central Government is required. For prescribing rates/conditions, however, for properties/assets vesting in the Board, it is this Authority which has been empowered. This power is not restricted to property within the port area; it relates to **all** property and assets vesting in the Board.

In short, Section 34 deals with the mode of execution of contracts and specifies the contingencies in which (previous) approval of the Central Government will be required. It does not anywhere distinguish between properties within the port area and outside the port area. In terms of Section 29(3) *ibid*, this Authority has to prescribe rates/conditions for **all** properties and assets **vesting** in the Board.

4. In the result, and for the reasons given above, based on a collective application of mind, this Authority hereby decides as follows:-

- (i). For purposes of framing Scale of Rates and Statement of Conditions, this Authority has jurisdiction over **all** the properties and assets, wherever located, of a Major Port Trust.
- (ii). Under Section 49 (1) of the Major Port Trusts Act, this Authority will frame the Scale of Rates and the Statement of Conditions for use of the following categories of property:
 - (a). Property belonging to the Board.
 - (b). Property in possession of the Board.
 - (c). Property in occupation of the Board.
 - (d). Property in any place within the limits of the port area or port approaches.
- (iii). For purposes of framing Scale of Rates and Statement of Conditions, all lease cases (irrespective of any time limitation) relating to all the properties of a Major Port Trust shall be seen to fall within the jurisdiction of this Authority.

5. This Order shall come into force with immediate effect after notification in the Gazette of India.

S.SATHYAM, Chairman

[Advt./III/IV/Exty./143/99]

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