TARIFF AUTHORITY FOR MAJOR PORTS

NOTIFICATION

No.TAMP/75/99-CHPT  -  In exercise of the powers conferred by Sections 49 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the application made by the Tamil Chamber of Commerce about heavy lift charges in the cases of direct delivery levied by the Chennai Port Trust (CHPT), as in the Order appended hereto.

Case No.TAMP/75/99-CHPT

The Tamil Chamber of Commerce (TCC) . . .  Applicant

Vs.

The Chennai Port Trust  (CHPT) . . .  Respondent

O R D E R

( Passed on this 10th day of April 2000 )

This case relates to a representation made by the Tamil Chamber of Commerce (TCC) against the charges being levied by the Chennai Port Trust (CHPT) on ‘FC Vaigai’ when hired by the trade for lifting/loading heavy lifts. It has been stated that the Port levies 100% charges even for direct delivery onto the trailers, thereby charging for two operations (viz., lifting from the vessel/barges and stacking/delivery). While effecting direct delivery, in fact, there is only one operation viz. lifting from the barges / vessels by the CHPT’s FC Vaigai which is hired by the trade. Since direct delivery is effected on to the trailers there is no operation for stacking and delivery later.

2.1. It has also been stated that the CHPT’s Scale of Rates is restricting direct delivery of heavy lift citing the following reasons :-

(a). Only when the Trust’s equipment are out of order or down for maintenance, overhaul repairs as certified by Trust’s Chief Mechanical Engineer; and,

(b). When the heavy lifts have to be landed / shipped necessarily by the use of ship’s derrick.
2.2. The TCC has also stated that the port insistence of 100% charges for two operations and restricting direct delivery for the specific reasons as at (a) and (b) above will seriously affect port’s cargo throughput, especially when the port is facing impending loss of cargo on account of emergence of the new Ennore Port.

3. The TCC has, accordingly, requested that the port maybe advised to permit direct delivery of heavy lifts and charge only for one operation (i.e. only for lifting) by FC VAIGAI in such cases.

4. Comments were called for from the CHPT as well as from various users / representative bodies of users. Comments received from the users are summarised below:

Southern India Chamber of Commerce and Industry

(i). There is actually one operation.

(ii). The suggestion to charge for one operation only i.e. lifting heavy lifts by FC Vaigai may be considered.

The Shipping Corporation of India

(i). Treating a single operation of shifting cargo from the shore and loading the same to the ship as double operation is in fact contradictory to Clause 4 (a) and Clause 5 of the present CHPT Scale of Rates.

(ii). SCI (Chennai) office has taken up this matter several times with the Port; but, have received vague replies. The Port continues to maintain their stand that the charges are in order without actually making any effort to address the issue.

(iii). In view of the above, the SCI fully agrees with the points raised by the TCC in their letter dated 4 September 99 as the same is in line with SCI’s request to the TAMP and the CHPT.

The Container Shipping Lines Association

The CSLA has no comments on the issue.

The Chennai Steamer Agents’ Association

(i). In the case of actual direct delivery, CSAA is entirely in agreement with the views of the TCC.
(ii). In order to protect the consignee’s direct delivery, there should be no hold up of on board operations utilising the VAIGAI.

**Indian National Shipowners’ Association**

(i). INSA fully supports SCI views and those of TCC.

(ii). Division of one operation universally accepted as such is being arbitrarily made into two.

(iii). Jetty to “Vaigai” is for the convenience of the Port. Vaigai must and should be able to take load directly from Jetty to ship or vice versa.

(iv). If port wishes to make it into two stage programme for their convenience, they cannot charge double for one operation.

**M/s. Tube Products India Limited**

(i). In the absence of a charge for handling package weighing above 15 T by Fork Lift, Port is collecting the charges of higher capacity crane, even though when such higher capacity crane is not used.

(ii). TAMP may take up the above issue with the CHPT for suitable inclusion in the tariff of Fork Lifts.

5. A joint hearing in this case was held at the CHPT. During the joint hearing the following points were raised:-

**The Tamil Chamber of Commerce**

(i). In all cases the CHPT collects separate charges for landing, stacking and delivery and there is no stacking or delivery in direct delivery.

(ii). In cases of direct delivery, only one (and not two) charge shall be levied. In other cases, only two (and not three) charges shall be levied.

**The Chennai Port Trust**

(i). In normal cases, one (landing) charge from Steamer Agent and two (stacking and loading) charges from consignee are levied.

(ii). In direct delivery, one charge from Steamer Agent and one from consignee are levied.
(iii). The CHPT has gone by a strict interpretation of its Scale of Rates.

(iv). The logic of their levy is ‘utilisation of energy’ by the crane. They levy a charge for each hoist.

**The Shipping Corporation of India**

(i). Section 4 (a) of Scale of Rates is very specific and the CHPT’s claim is wrong.

(ii). If the CHPT feels that it is unsafe to directly load from shore to ship, then they must amend the Scale of Rates.

**M/s. Tube Products of India Limited**

(i). The CHPT charges twice when it shall be once. If they have to charge, let them collect 50% and allow engagement of private cranes.

**The Hindustan Chamber of Commerce**

(i). Why does the CHPT charge 50% + 100% in case of direct delivery by ship’s gear? How does the 100% levy arise at all?

(ii). Conditions 4 (a) and 5 of the Scale of Rates are very clear. The CHPT’s reference to audit, etc., is not relevant.

7. Based on the totality of information collected during the processing of this case and the facts stated above, the following position emerges:-

(i). The basic representation is about the manner of computation by the CHPT of the ‘heavy lift’ charges to be levied.

(ii). Two incidental issues have come up as follows –

   (a) lack of clarity about what is ‘heavy lift’; and,

   (b) deployment of (and, consequently, levy of higher charges therefor) heavy duty cranes because of non-availability of lighter duty cranes.

   It is not necessary for this Authority to go into these issues as they have been adequately dealt with and disposed of in another case, relating to the CHPT itself, arising from a representation filed by the United Liner Agencies of India (P) Limited.

(iii). The representation covers two types of deliveries:
(a). Direct Delivery i.e., Ship-to-(Trailer on) shore or (Trailer on) shore-to-Ship.

(b). Normal Delivery i.e., Ship to Shore, Shore to Yard, and Yard to Trailer; and, vice versa.

(iv). Although the Applicant-Organisation (i.e., the TCC) has pressed its point in respect of both the types of deliveries, the problem is relevant only to the first type, viz., the ‘direct delivery’.

In the case of the second type viz., ‘normal delivery’, there is no ambiguity about involvement of three operations. That being so, there can be no justifiable objection to the CHPT’s levy of three charges.

Significantly, the users, in their comments, have also focussed on cases of ‘direct delivery’.

(v). A further differentiation has been introduced by distinguishing between operations handled by the CHPT’s Floating Crane (i.e., F.C. VAIGAI) and operations handled by ships’ gear. It is not necessary to go into this differentiation in detail. A decision on the basic issue of contention will resolve the dispute in both the cases.

(vi). The basic issue of contention is whether, in cases of ‘direct delivery’, the operation(s) involved shall be counted as ‘one’ or ‘two’.

The CHPT counts it as ‘two’. The CHPT argument is that the operation is performed in two stages – (a) from the ship to the platform of the floating crane; and, (b) from the platform of the floating crane to the trailer. As has been sought to be explained by the Chairman of the CHPT, the logic of this (double) charge is based on ‘utilisation of energy’ by the crane; the Port levies one charge for every hoist.

The CHPT has also explained that the charges are duly apportioned between the Steamer Agent and the Consignee and that the levy is not unreasonably loaded on to any one party.

(vii). That the charges are duly apportioned between different parties is not of particular relevance. What is relevant is the justification for the totality of the charge levied by the CHPT.
The CHPT claim in this connection that it has gone by a strict interpretation of the Scale of Rates does not appear to be borne out by the facts.

A reading of Condition 4(a) under Scale ‘C’ (relating to use of Heavy Lift Cranes) of the Scale of Rates clearly establishes the contention of the Applicant-Organisation in respect of ‘direct deliveries’. Condition 4(a) reads as follows:

“The cranage charge on packages discharged from or loaded into a ship by the floating crane shall cover the use of the crane for moving the package from the ship to shore or shore to ship, as the case may be.”

As has been contended by the SCI, the CHPT must levy the charge strictly in accordance with this condition; and, if it feels that it is unsafe to directly load from shore to ship or to unload from ship to shore, then, it must get the Scale of Rates appropriately amended.

It is relevant here to note the contents of Condition 4(b) also which reads as follows:

“When barges are supplied for conveyance of heavy lift packages lifted by the floating crane between the ship and the shore, no charges will be levied towards hire of the barges.”

This (additional) provision clearly establishes that what is in reference is a single integrated ship-to-shore or shore-to-ship operation.

On this reckoning, the CHPT claim about charging per hoist on the basis of ‘utilisation of energy’ by the crane cannot be found to be a tenable proposition.

(viii). In the light of the analysis given in (vii) above, it is not necessary to go into the merits of the suggestion of M/s. Tube Products India Limited that if the CHPT must charge twice (when it shall only be once), then, let it collect 50% of the charge for non-utilisation of its crane; and, allow the users to engage private cranes for the operation.

In any case, this issue will get covered when the point about use of ship’s gear is considered.
(ix). It has been pointed out by the HCC that, even in cases of ‘direct delivery’ by the ship’s own gear, the CHPT levies two charges @ 50% and @ 100%. Spotlighting the incongruity of this imposition, the HCC has demanded deletion of the levy of a 100% charge in such cases.

The CHPT’s response has been that the 50% charge is for non-utilisation of the floating crane; and, the 100% charge is for non-utilisation of the shore-based cranes.

In the light of the analysis given in (vii) above, it has to be held that cases of ‘direct delivery’, whether by the port’s floating crane or by the ship’s own derrick, clearly involve only one operation. That being so, as has already been held by the Authority in the case of the United Liner Agencies of India (P) Limited, there can only be a 50% charge for non-utilisation of the port’s heavy lift crane in such cases. The levy of an additional 100% charge (apparently for non-utilisation of shore-based cranes) is an unreasonable stretching of the principle involved.

As was jocularly observed by the INSA representative at the joint hearing, if this logic is extrapolated, then, any vessel not calling at the CHPT and going to another port nearby must also be charged for non-utilisation of the port facilities!

On this reckoning, therefore, the HCC demand for deletion of the levy of an additional 100% charge in such cases has to be conceded.

8. In the result, and for the reasons given above, the Authority decides as follows:

(i). It is not incorrect for the CHPT to levy three charges in cases of ‘normal delivery’.

(ii). In cases of ‘direct delivery’ by Port’s floating crane, there is only one operation involved. Levy of two charges, therefore, is not correct. The CHPT can justifiably levy only one charge in such cases.

(iii). In cases of ‘direct delivery’ by the ship’s own derrick, again, there is only one operation involved. That being so, levy of an additional 100% charge is not correct. The CHPT can levy only a 50% charge in such cases.
9. The CHPT is directed to include the above decisions in its Scale of Rates. This order shall take effect immediately from the date of its notification in the Gazette.

S.SATHYAM, Chairman

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