Tariff Authority for Major Ports

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 received from the Chennai Steamer Agents' Association (CSAA) about the tariff levied by the Chennai Port Trust (CHPT) on vessels shifted to outer anchorage after berthing as in the Order appended hereto.

(S. Sathyam)
Chairman

M/s. Chennai Steamer Agents’ Association - - - Applicant

Vs

The Chennai Port Trust (CHPT) - - - Respondent

O R D E R
(Passed on this 12th day of August 2002)

This case relates to a representation received from the Chennai Steamer Agents’ Association (CSAA) about the tariff levied by the Chennai Port Trust (CHPT) on vessels shifted to outer anchorage after berthing.

2. The CSAA has made the following main points in its representation:

(i). The CHPT charges 50% of berth hire charges on vessels which after staying alongside, shift to the outer anchorage for any reason; and, thereafter re-berth. This charge is levied for the duration of stay of the vessel at the anchorage.

(ii). The CHPT has relied on the provisions prescribed in its Scale of Rates (SOR) in Chapter XI, Clause E which are reproduced below:

“(E) Rate at Mooring Berth.

(i). Foreign-going Vessels: Half the rate as per the Schedule. A lump sum rebate of Rs. 1,837.50 (USD 87.465) per 8 hour unit shall be allowed on the charges mentioned in the above Schedule – I for vessels in Group – I to IV and the rate at mooring berth shall be half the rate so arrived, after allowing this rebate.

(ii). Coasting vessel shall be charged at 70% of the charges applicable to a Foreign Vessel, as arrived at above at the rates specified in Rupees.

(iii). The provisions referred by the CHPT make it abundantly clear that 50% of the berth hire charge is applicable only to those vessels which shift to moorings from a berth; and, thereafter
reberthed. And, furthermore anchorage does not constitute a ‘mooring berth’.

(iv). The CHPT had turned down its views stating that the existing practice of levying 50% of the Berth hire charge on vessels shifted to anchor after berthing is more of a trade practice.

(v). It is pertinent to mention here that the Chennai Port has moorings also; and, 50% of the Berth hire is levied for vessels at moorings.

(vi). The CHPT charges full Pilotage fee in case users request to move the vessel to the anchorage.

3. In accordance with the consultative procedure prescribed, a copy of the representation received from the CSAA was forwarded to the CHPT and the concerned representative bodies of port users for their comments. The comments received from them are summarised below:

Tamil Chamber of Commerce (TCC)

It is reasonable to charge 50% of berth hire charges only on vessels shifted to mooring. It is, however, not reasonable to levy 50% of the berth hire charges on vessels shifted to anchorage for any reason and thereafter reberthed.

Madras Chamber of Commerce and Industry (MCCI)

(i). The current practice adopted by the CHPT to charge 50% of the berth hire on vessels located in the Ambedkar Dock is reasonable, however, the CHPT’s interpretation to equate this tariff on vessels which are anchored in the outer roads is incorrect.

(ii). Vessels which are berthed at the moorings have the advantage of being in a sheltered dock inside the breakwater which is a facility provided by the Port whereas the vessels which are at the outer anchorage do not have such a facility.

(iii). This practice of charging berthing fee on vessels anchored at the outer roads is not followed at any other ports in India.

(iv). The representation of the CSAA is valid. The Authority may, therefore, pass an Order stating that the vessels which are shifted to the outer anchorage after initial berthing shall not be levied 50% of the berth hire charges.

The Shipping Corporation of India (SCI)

(i). The contention of the Chennai Steamer Agents’ Association is correct and fully justified. The port trust must be directed not to charge any berth hire for vessels which are shifted to outer anchorage for their stay at anchorages.

(ii). Since the vessels at mooring berths make use of the mooring buoys, the port is justified to collect 50% of the normal berth hire charge to recover the amount spent by them for installing the moorings buoys and also for the maintenance of these buoys.

(iii). The port does not provide any facility such as mooring buoys, etc., nor does it incur any expenses for the vessels occupying the outer anchorage. That being so, the charge levied by the CHPT at 50% of the Berth hire for the vessels at outer anchorage is totally unjustified.

The Container Shipping Lines Association (CSLA)
(i). Though it is not unreasonable to charge for anchorage facilities, the extent of charge levied by the CHPT for vessels at anchorage seems illogical and unfair.

(ii). The contention of the CHPT that the charge levied by it is “trade practice” is unhelpful. It has become a trade practice, as the trade has no other option.

(iii). Each charge must be justified against a number of criteria, particularly value for money and competitiveness. The berth hire charged in the instant case does not represent value for money and aggravates uncompetitiveness (of the Indian ports) with the neighboring ports.

4. In response to the representation of the CSAA, the CHPT has furnished the following comments:

(i). 50% of the berth hire charge is being levied as per the provisions prescribed in clause (E); Chapter XI – Berth Hire Charges, in Book I of the Scale of Rates for vessels which after staying alongside, shift to the mooring berth including outer anchorage for any reason; and, thereafter reberth since the Old Petrol Berth and Outer Anchorage are considered as “Inner Harbour” for the purpose of levy of vessel-related charges.

(ii). Section 47 of the Indian Ports Act states that when a vessel enters a port, but does not discharge or take in any cargo or passengers therein (with the exception of such unshipment and reshipment as may be necessary for purposes of repair), she shall be charged with a port due at a rate approved by the Government and not exceeding half the rate with which she would otherwise be chargeable.

In pursuance of this provision, 50% of the berth hire charge is being levied on the vessels which shift to the outer anchorage from a berth; and, thereafter reberth.

(iii). ‘Port Dues’ shall mean all vessel-related charges.

5. A joint hearing in this case was held on 7 May 2002 at the CHPT premises in Chennai. At the joint hearing, the following submissions were made:

**Chennai Steamer Agents’ Association (CSAA)**

(i). At anchorage, no service is provided. Hence, there is no justification for any fee.

(ii). Section 47 of the Indian Ports Act (IPA) has been quoted by the CHPT. It is for vessels in distress; not for all vessels.

(iii). The SOR prescribes rate for the mooring berths in the inner harbour only. Outer anchorage is not covered by this charge; but, it has been added by the CHPT. Levying vessel-related charges or any charges at outer anchorage does not arise at all.

(iv). At moorings, the port levies 50% of the Berth hire. How can it be the same for the outer anchorage?

**The Shipping Corporation of India Limited (SCI)**
(i). At outer anchorage no service is provided. How can the CHPT levy any charge?

(ii). The SOR conditionalities present in 1992, were “quietly omitted” in 2000. The SCI had sent a representation to the TAMP.

**The Chennai Port Trust (CHPT)**

(i). Section 47 of IPA is valid even today. The TAMP cannot take the stand that only the Major Port Trust Act provisions will govern Port Dues.

(ii). At outer anchorage, some indirect services are provided. In cases of oil pollution we do provide emergency services.

(iii). If they don’t want to pay, they can go beyond the port limits.

(iv). To avoid additional Berth hire, vessels shift to anchorage. We have to charge there.

(v). ‘Berth hire’ or ‘Anchorage Fee’, call it by any name; but, the charge has to be there.

**The Container Shipping Lines Association (CSLA)**

Application of the tariff by the CHPT is incorrect. Mooring may attract some tariff, not anchorage. For shifting to anchorage, only Pilotage must be charged.

6. With reference to the totality of information collected during the processing of this case the following position emerges:

(i). The CHPT Scale of Rates prescribes a levy of 50% of the berth hire charges for occupation of mooring berths. The notified SOR mentions about mooring berths only. The statement of the CHPT that the relevant tariff prescribed is for ‘shifting to mooring berth including outer anchorage for any reasons’ is not in conformity with the SOR approved by this Authority. Further, the tariff prescribed is for occupation of mooring berths; and, there is no such stipulations like shifting from alongside berth and subsequent re-berthing attached to the tariff.

(ii). Before one goes into the merit and relevance of allowing a port to levy a separate fee from vessels occupying its anchorages, the issue to be analysed for consideration is whether the levy made by the CHPT so far for occupation of its anchorages at a rate notified for mooring berths is as per its Scale of Rates.

(iii). The relevant provision in the notified SOR lends no scope for any ambiguity. It specifies a rate for occupation of mooring berths. As has
been argued by the CSAA, a mooring berth and an anchorage cannot be the same. At a mooring berth, as pointed out by the SCI, the facility of mooring buoys is available which is not relevant at outer anchorage.

The CSAA has referred to a ‘trade practice’ adopted by the CHPT. Under law, all the major port trusts are bound to levy charges for services rendered by them or use of their properties at the rates and conditions prescribed by this Authority. There is no scope available legally for introducing a parallel tariff arrangement by the Ports themselves in the name of trade practices.

(iv). Although it is not necessary for this Authority to enlighten any Port Trust on an explicit legal provision, it has become inevitable here to (avoidably) deal with such a situation in view of the CHPT’s statements, made both in its written comments and at the joint hearing, about applicability of the Indian Ports Act to the major port trusts in general and Section 47 of the said Act in particular.

There is no doubt that the Indian Ports Act extends to all ports in the country. This Authority has never held anything contrary to this explicit legal position. Insofar as the tariff arrangement at a Major Port Trust is concerned, the Major Port Trust Act, as amended in 1997, is the relevant legislation. Port Laws (Amendment) Act 1997 has amended the provision in the IP Act empowering the Government to fix Port Dues at the major ports and placed it under the jurisdiction of this Authority by introducing suitable insertions in this regard in the MPT Act. For the benefit of the CHPT, Section 47 of the IP Act is reproduced below:

“47. Port-due on vessels not discharging or taking in cargo – When a vessel enters a port [not being a major port] subject to this Act, but does not discharge or take in any cargo or passengers therein (with the exception of such unshipment and reshipment as may be necessary for purposes of repair), she shall be charged with a port-due at a rate to be determined by the [Government] and not exceeding half the rate with which she would otherwise be chargeable.”

If the CHPT had referred to an updated copy of the IP Act, everybody’s time would not have perhaps been wasted by unnecessarily dwelling on this issue.

(v). Even though Section 47 of the IP Act is not applicable to a major port, a similar provision for levying port due on vessels not discharging or taking in cargo or passenger is available in the MPT Act under Section 50 B. This provision is applicable only for those vessels entering a port but not discharging or taking in any cargo or passenger and not to a vessel shifted from a berth, to an anchorage for subsequent re-berthing. When the Act specifically mentions about
various charges and refers to Port due only in the context of entry of vessels into a Port, the logic governing the CHPT’s assumption of taking port dues to mean all vessel related charges is not apparent. For argument’s sake, even if the CHPT’s stand is admitted, then such 50% levy cannot be with reference to berth hire only. Such concessions are to be extended to pilotage fees and port due also, which is not the approach adopted by the CHPT. It, therefore, appears that the CHPT tries to defend its indefensible action in this case by making self-contradictory arguments and wrong references to the clear legal positions.

(vi). In the absence of any provision in its Scale of Rates, the action taken by the CHPT to levy anchorage charges at the rate applicable to mooring berths cannot be said to be authorised and is to be held as a wrong application of its Scale of Rates. The CHPT is, therefore, required to refund such charges collected so far. To facilitate smooth and quick refunding process, the concerned users can file within two months from the date of notification of this Order in this case their refund claims which can be processed towards settlement by the CHPT.

By way of abundant caution, it is to be mentioned here the refund ordered now is not in relation to an ‘overcharge’ but relates to an unauthorised levy. That being so, the claims will not be limited by the time factor stipulated in Section 55 of the MPT Act.

(vii). The MCCI has argued that the practice of charging berthing fee on vessels anchored at the outer roads is not followed at any other ports in India. This is not the correct position. Many of the major ports levy anchorage fee as a percentage of applicable berth hire charges. In these cases, this Authority while approving such fees has advised them to delink the fee from berth hire and to prescribe separate GRT based rates with reference to the location of the anchorages, depth available thereat, etc. Such a rationalised anchorage fees structure has already been approved in the Scale of Rates of the Mumbai Port Trust. In that case, differential rates for vessels waiting and vessels working cargo have also been prescribed.

(viii). In line with the position obtaining at the other major ports, there can be anchorage fees at the CHPT also. As pointed out by the CHPT, various services are availed by the vessels at the anchorages. It is noteworthy that the CSLA has also conceded this point by stating that it is not unreasonable to charge for anchorage facilities. The CHPT has not proposed levy of any anchorage fees in its last general revision of tariffs and also in its proposal for current general revision of tariffs which is being processed separately. Nevertheless, the CHPT is advised to propose within six months suitable GRT based anchorage fees.

(ix). Although this Authority finds that anchorage fees already levied by the CHPT at the rate applicable for mooring berth is unauthorised in the absence of provisions in the SOR and finds levy of 50% of berth hire as
anchorage fees unreasonable, it does not have any objection to introduction of anchorage fees in the Scale of Rates for prospective application. Notwithstanding the advice given to the CHPT to formulate its proposal in this regard, this Authority is inclined to introduce *suo motu* an interim arrangement of levying anchorage fees at the CHPT. Since costing details and location of anchorages are not available, the interim rate can be linked to berth hire charges (excluding wharf crane hire charges) and applied uniformly to all anchorages. The anchorage fees at some other major ports vary between 15% of berth hire at the KOPT to 25% of the berth hire at the VPT. That being so, it appears reasonable to prescribe anchorage fees at the CHPT to be levied @ 20% of the applicable berth hire charges (excluding wharf crane charges). This Authority finds it reasonable to introduce with prospective effect this provision in the SOR of the CHPT.

(x). The CSAA has also agitated an issue about levy of full pilotage fee for shifting of vessel from berth to anchorage and subsequent reberthing. It has already been clarified by this Authority in many other cases that composite pilotage fee is for movement of vessels within the dock basin. If a vessel is moved, at the request of the user, to the outer roads, it is reasonable for the port to levy full pilotage fee prescribed.

7.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority takes the following decisions:

(i). The representation of the Chennai Steamer Agents’ Association is admitted to the extent of requiring the CHPT to refund, based on claims to be filed by the users, the mooring berth charges unauthorisedly levied so far for vessels placed at the anchorages.

(ii). The CHPT is advised to propose within six months amendments to its Scale of Rates to include GRT based anchorage fees without linking it to berth hire charges.

(iii). As an interim arrangement, the CHPT Scale of Rates is amended to include a provision for levy of anchorage fees @ 20% of applicable berth hire charges (excluding wharf crane hire charges).

7.2. The decision at Para 7.1(iii) will come into effect 30 days after notification of the Order in this case in the Gazette of India.

(S. Sathyam)
Chairman