Tariff Authority for Major Ports

NOTIFICATION

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 disposes of the representations made by various port users and representative bodies of port users about tariff related issues arising out of the operational procedure introduced by the Chennai Container Terminal Limited (CCTL) in the initial phase of operation of its terminal as in the Order appended hereto.

(S. Sathyam)
Chairman

Case No. TAMP/73/2001-CHPT

Various port users and representative bodies of port users of the Chennai Container Terminal - - - Applicants

Vs -

Chennai Container Terminal Limited (CCTL) - - - Respondent

ORDER

(Passed on this 8th day of April 2002)

This case relates to representations received from users about tariff issues arising out of the operational procedures introduced by the Chennai Container Terminal Limited (CCTL) in the initial phase of operation of its Terminal.

1.2. This Authority had passed an Order on 4 December 2001 authorising the CCTL to levy charges as per the CHPT Scale of Rates for the services rendered as an interim measure till its proposal was disposed of.

2.1. At the joint hearing held on 18 January 2002 at the CHPT to consider the CCTL proposal for fixation of tariffs, representatives of various port user organisations had raised various operational and tariff related issues arising in the context of implementation of the interim tariff approved for the CCTL. The Madras Chamber of Commerce and Industry (MCCI) and the Chennai Custom House Agents' Association (CCHAA) had sent their representations before the joint hearing on some of these related issues, which were forwarded to the CCTL for comments.
2.2. At this joint hearing, it was decided that another joint hearing would be held on 2 February 2002 at the CHPT premises in Chennai to consider the tariff related issues and operational matters raised by the users in the context of implementation of the interim tariffs approved for the CCTL. All the users were advised to file their written submissions; and, also endorse a copy of the same to the CCTL simultaneously.

3. The representations received from the Madras Chamber of Commerce and Industry (MCCI), Chennai Custom House Agents Association (CCHAA) and the written submissions filed by various users organisations are summarised below:

**The Madras Chamber of Commerce and Industry (MCCI)**

**A. Tariff Related Issues**

(i). The CCTL in order to overcome the problem faced by them in operating the quay and yard equipment decided unilaterally without consulting the users to move all the boxes to an off-dock CFS outside the Port run by the CONCOR.

(ii). The CCTL moved the boxes from the hook of the vessel to CONCOR with no intimation to Trade; and, denied direct delivery of boxes at the yard. This resulted into levy of demurrage and storage charges which would not have been incurred if direct delivery from the Terminal was allowed.

(iii). Since the consent and concurrence of the Trade was not obtained for such direct movements, the entire period from the day the Terminal was taken over till restoration of normal working may be treated as *dies non*. The trade shall not be made to suffer for the inefficiency of the CCTL.

(iv). When the boxes are moved from hook of the vessel to a CFS outside the Port, there is no deployment of the CCTL equipment other than the quay side gantry crane. Hence, out of the THC of Rs.1415/- per 20’ and Rs.2125/- for 40’ container, only Rs.790/- and Rs.1185/- is leviable.

(v). The tariff of Rs.625/- for 20’ and Rs.940/- for 40’ container with respect to transportation to and lift off at the CY shall not be collected from the Line. If it is collected the same shall be refunded.

(vi). After taking over the Container Terminal, the responsibility of the stevedoring rests with the CCTL and not with the Line. Hence, the Lines / Agents shall refund the on-board stevedoring component of Rs. 448/- per unit included in the THC.

(vii). The lift-off charges of Rs.350/- and Rs.515/- for 20’ and 40’ container respectively which has been collected as a part of the THC shall be
refunded in cases where the boxes were moved directly from the hook of the vessel to outside CFS.

(viii). The wharfage on cargo assumes a built in provision to cover the normal storage of cargo. In the event of direct delivery, the cargo shall not enjoy the built in cushion for storage. That being so, the proportionate wharfage shall be refunded.

(ix). The introduction of a new cost item of Rs.2000/- per box as Special Service Request (SSR) is unjust and without any legal sanction; and, hence deserves to be refunded.

B. Procedure Related Issues

(i). At the joint hearing, the procedural aspects as regards handling the operations of the Container Terminal were accorded equal prominence as of tariff in view of the fact that procedure related matters do have implications for the tariffs.

(ii). The CCTL did not inform the Trade of its procedures and practices after taking over the Terminal. There is no written documented procedure even now. This has lead to confusion at the Container Terminal.

(iii). The Ministry of Finance has introduced the concept of ‘Green Channel’ for reputed importers to bring down the transactional cost. This being a step in the right direction shall be allowed to continue at the CCTL.

(iv). There is a provision in the CHPT tariff to carry out Customs inspection of cargo within the port. This practice is being followed for almost two decades. It helps to keep the costs under control. The CCTL must, be directed to retain the earlier practice. Time limit may, however, be prescribed for completing such operations to avoid pile up of cargo at the stack yard.

(v). All the operations existing before the take over as regards exports shall be retained. If at all any change is proposed, it has to be in consultation with the trade and users.

(vi). Due to militant activities of labour, its member firms are unable to either proceed with the shipment or seek alternative method of disposal of the cargo lying in the ‘O’ yard. This has lead to additional financial losses.

The Chennai Custom House Agents’ Association (CCHAA)

(i). As per the rates prescribed in the existing Scale of Rates of the CHPT the tariff for movement of container from CPY to ‘O’ yard is Rs.1,040/-
for a 20' container and Rs.1,560/- for a 40' container whereas the CCTL is collecting Rs. 1,700/- and Rs.2,550/- for the same operation.

(ii). The CCTL levies charges for inspection of cargo on tonnage basis. This is a new levy and has not been proposed at all.

(iii). A sum of Rs.750/- for opening of package at the time of Customs inspection; and, Rs.50/- for breaking one time seal is levied by the CCTL without approval of the TAMP. Such charges are not prescribed in the CHPT’s Scale of Rates.

Chennai Steamer Agents’ Association (CSAA)

(i). Special Service Request (SSR) form does not specify whether the tariff applicable is for exports or imports.

(ii). Several items listed in the SSR also form part of the existing port tariff. Any specific tariff item can be considered only after the TAMP’s ruling; and, till such ruling, the existing tariff shall prevail.

(iii). The charges for change of delivery status from Chennai CY to ICD and vice versa must be specified.

(iv). The weights incorporated in the Form No.13 differ from EIR submitted as it is possible that the truck weight is also being included.

(v). Contrary to the assurance given by the CCTL to provide very efficient and cost effective service, the performance of the CCTL turned out to be quite unenviable rather, touched the negative end of the scale. As a result the Feeder Operators increased the congestion surcharge up to US$ 200 per TEU.

(vi). As the situation became uncontrollable, the CCTL started enbloc movement of containers to CONCOR throwing the entire trade into maximum hardship and consequent losses.

The Container Shipping Lines Association (India) (CSLA)

(i). The CCTL has verbally advised that it will cease to collect charges hitherto collected by the CHPT from Shippers / Consignees relating to Cargo Wharfage and Demurrage; and, that such charges will be invoiced to Lines directly by the CCTL. Collection of such charges by Lines shall impose additional financial and administrative burden in way of Service Tax and Income Tax.

(ii). A tariff revision is pending before the TAMP and till final disposal of the matter, status quo must be maintained.
(iii). Any departure from established procedure ought to be made in writing, explaining the reasons for change, planned modus operandi, and by following a consultative process.

(iv). The SSR levied by the CCTL is not authorised by the TAMP.

**The Tamil Chamber of Commerce (TCC)**

(i). The entire congestion that prevailed at the time of take over of the Terminal has been solved; and, instead of vessels waiting for berth as on date the berth is waiting for vessels.

(ii). Eventhough, it is mentioned that the rates for billing is arrived based on various components of tariff approved by the TAMP, there is lot of ambiguity in the new procedure of billing as regards levy of SSR.

(iii). Huge demurrage have been paid by the importers due to delay in delivery of containers by the CCTL. The CCTL must refund the demurrage charges collected since the delay in delivery was due to failure on the part of the CCTL.

**The Hindustan Chamber of Commerce (HCC)**

(i). As many as 2000 plus boxes were lying in the yard when the CCTL took over the Terminal. These were not attended to by the private operator even after a fortnight since the concentration was to move the boxes from the hook. The importers were also denied delivery of the box. As a result all these boxes incurred avoidable storage and demurrage charges purely due to the fault of the CCTL.

(ii). The productivity of the CCTL for the first 30 days after the taking over the Terminal dropped drastically from 85 moves per shift per hook achieved by the CHPT in last 30 days of handling the Terminal to 45 move per shift.

(iii). During the first month of operation of the terminal the CCTL blamed the pathetic condition of the equipment it had inherited from the CHPT as the reason for its non-performance. With the same equipment and with only adding three reach stackers, the CCTL now claims to have reached high levels of efficiency. It appears that pathetic condition of the equipment indicated by the CCTL was only a ploy to cover up its inadequacy.

(iv). Without giving any notice to the trade, the CCTL stopped direct delivery of all import boxes from the Terminal from the 8th December 2001 due to severe congestion in the Terminal (created by the CCTL). It started flushing out all the containers to the Off-Dock CFS of CONCOR and insisted the Trade to take possession of the containers from the CONCOR.
(v). The Trade was forced to pay all the penal charges like storage on the container and demurrage on the cargo even for the delays in removal of the container to the CONCOR CFS, which is an activity entirely undertaken by the CCTL.

(vi). There should be a specific bar for the Terminal operator to move the container to an off-dock CFS (unless specifically requested by the Importer) on his own for the first seven days of landing of the Importer to enjoy the demurrage free period, to complete all required documentation and to cut down all additional cost that are suffered by outward movement to an off-dock CFS.

The entire period of restoration of the Terminal to normalcy may be treated as demurrage and storage free period. This free period may be extended to all boxes at Terminal or sent to the CONCOR by the CCTL.

(vii). It has reiterated the comments of the MCCI as regards customs clearance carried out within the port by the CHPT. The option of carrying out the customs formalities should rest with the Importer and delegated to private terminal operator.

(viii). The option of clearance of a container from the Port or of its movement to an off-dock CFS should only be with the Importer.

(ix). It has reiterated the views of the other users as regards as levy of SSR.

(x). Procedures for both receipt of export boxes and delivery of import containers shall be laid down taking into consideration the local conditions and set practices. Any change of the set down procedure can be only in consultation with the trade and the users.

(xi). The CCTL has also denied the facilities enjoyed by the Green Channel Importers to take possession of the cargo after carrying out the Customs verification of only the container number within the Terminal.

(xii). When a single shipping bill covering multiple containers is moved to the terminal one or more containers are not able to enter the gates before cut off time due to long queue. As a result apart from loosing connectivity to the planned vessel, an exporter is forced to split the customs document causing lot of delay and additional cost along with payment of SSR to the CCTL.

(xiii). The practice of waiver of demurrage charges during the period of detention of cargo by the Customs may be continued as per the Order of the TAMP.

M/s. ITC Bhadrachalam Paperboards Limited
The CCTL was devoid of any contingency plan despite knowing the fact that there would be teething problems initially when the Terminal is taken over. The Trade was totally kept in the dark of all the operations and procedures.

Penal charges of approximately Rs.75 lakhs covering cargo demurrage, container storage and container detention charges had to be paid due to lack of proper planning of the CCTL.

The trade shall not be compelled to pay penal charges for the inefficiency of the Terminal Operator. Penal charges collected by the CCTL whether it is cargo related or container specific must be refunded preferably with interest.

The track record of the CHPT in terms of direct delivery of import as compared to the CCTL’s performance immediately after the taking over the Terminal justifies its demand for waiver of penal charges.

The CCTL had stopped direct delivery of containers; and, had shifted the containers to a CFS from the 8 December 2001 to the 23 December 2001. Thus, it has no right to collect any ground rent for storage of cargo or demurrage charges for this period or until such time the containers were moved to the CONCOR. Further the calculation of free days shall commence from the 23 December 2001 for the containers lying in the Container Yard of the Port.

4.1. In response to the comments made by the MCCI and the CCHAA, the CCTL has submitted the following main points:

(i). The TAMP’s Order dated 4 December 2001 allows it to levy the rates prescribed in the existing CHPT Scale of Rates as an interim arrangement. Accordingly, it has followed the CHPT Scale of Rates 2001 as approved by the TAMP. The Order is silent on the issue of operating procedures.

(ii). On-board stevedoring charges of Rs. 448/- (plus 5% service tax thereon) levied by it is less than the charges levied by the CHPT.

(iii). Detailed operating procedures have been extensively circulated to all customers in the trade prior to commencement of Terminal operations through various presentations / formal gathering.

(iv). There was severe congestion coupled with poor availability of adequate yard equipment to facilitate normal operations. It was imperative to ensure that the available resources were used to an optimum level. Import yard inventory was fast reaching its maximum capacity and further continuation would have only meant complete closure of the Terminal. En-Bloc movement of imports is a standard operating procedure at most international terminals which helps to
reduce dwell time and thereby allows quicker delivery to the end user.

(v). Despite the fact that Customs permission for en-bloc movement was received on 7 December 2001, the actual movement post negotiations with CONCOR and TOA had started only from 10 December 2001. This decision was not taken unilaterally; but, after detailed discussions with various organisations.

(vi). Lists of containers being moved to the CONCOR were sent to the CONCOR, Customs, Steamer Agent and CCHAA. Further daily gate reports and yard inventory reports were also dispatched to the Steamer Agents.

(vii). Direct delivery was not terminated completely; but, was minimised. Several consignees were able to take the boxes directly from the yard.

(viii). There was no space to stow new arrivals due to pile up of import containers. Thus, after careful consideration of the situation and only after discussions with the relevant trade bodies, the decision was taken to move the boxes directly from the hook to the CFS for a few vessels.

(ix). *Dies-non* declaration depicts a scenario of total closure of the Terminal on *force-majeure* and cannot be justified for sake of granting remission of storage charges. Though it does not admit any liability, it has agreed to review claims on a case-by-case and waive any “penal charges” if such charges have been incurred due to its inability to give delivery of containers.

(x). Within 25 days it has turned around the situation which was fraught with congestion and delays at the time of take over to a stage of no pre-berthing delays. This has come at a tremendous cost in terms of both equipment and man-hours spent.

(xi). The tariff has a provision for rebate only if the customer’s trailers are used for transportation of the container. The trailers for en-bloc movement were undertaken at its cost. Thus asking for rebates outside the approved tariffs is not appropriate.

(xii). If the lines have collected an additional amount then this needs to be discussed with the respective lines.

(xiii). Wharfage is applicable to all cargo moved via the wharf and as such seeking non-applicability of wharfage for containers moved en-bloc from the hook is invalid.

(xiv). It has denied all procedures related issues raised by the MCCI. It has confirmed that all procedures had been adequately discussed with
various association bodies; and documented procedures were also circulated to various segments of trade.

(xv). Green channel clearance had continued throughout the period of its operations.

(xvi). Charges for movements from CPY to ‘O’ Yard and inspection charges on tonnage basis as alleged by the CCHAA have neither been established, nor circulated and certainly not implemented. The Customs inspection was carried out at ‘O’ yard and CFS.

(xvii). Approximately 95% of the boxes require only an ‘On Wheel’ inspection where the seal needs to be removed. A nominal fee of Rs. 50/- is only levied for cutting this seal.

(xviii). In case Customs require the cargo to be physically removed from the container during the course of the examination, then a destuffing / stuffing fee of Rs.375/- each is levied as per the existing CHPT tariff.

(xix). The congestion surcharge of US $ 200 has been withdrawn since we have completely cleared the backlog of vessels and there is no more congestion in the Terminal. It is further clarified that the average daily container throughput after take-over of the Terminal is higher than the CHPT’s productivity.

4.2. The CCTL has further submitted the following main points relating to the alleged levy of Special Service charges:

(i). The SSR is at the request of the customer. It is the only documentary evidence of a special service requested by a customer and the requisite service provided by it.

(ii). The SSR is not part of the routine service offered by it. In most cases the SSR becomes necessary since the customer for whatever reasons is unable to adhere to the operational procedures laid down by it. It has illustrated three such cases where the operational procedures have not been complied with thereby necessitating a request for special service. In most cases ‘free’ fall back solution is given by it; but, the same is not acceptable to the customer.

(iii). The rates for the SSR are strictly based as per the tariffs notified by the TAMP for different activities at the CHPT. Although the terminal may do several handlings to fulfil the SSR, the charges levied are for only one shifting. The charges for change of status from rail to road or vice versa or shut out are derived based on the rates applicable for shifting / lift-on/ lift-off operations.

(iv). The revenue realised by providing this special service is minimal. It is inconvenient to provide SSR; and, the CCTL would rather not provide this service at all.
5.1. A joint hearing in this was held on 2 February 2002 at the CHPT premises in Chennai. At the joint hearing, the following submissions were made:

**The Madras Chamber of Commerce and Industry (MCCI)**

(i). No discussions were held with us. There was no understanding / agreement. All decisions taken by the CCTL were adhoc.

(ii). That the CCTL has taken over the Container Terminal of the CHPT has also not been notified.

(iii). The so-called meetings were held; but, there were no minutes of the meeting. It was one-way action. Notes were distributed; but, there was no concern for users views. Even the notes were not on the CCTL’s letter head.

(iv). A highly curtailed service was provided; but, with all the applicable charges. This is unfair.

(v). Before going to the TAMP, we had made representations to the CCTL. The CCTL has neither (yet) acknowledged nor (yet) replied. The CCTL has imposed its systems unilaterally.

(vi). Green channel facility has been given the go by due to which unnecessary movement to ‘O’ yard has become necessary,

(vii). Congestion may not be there now; but, it was there. Its systems cost extra expenditure. The CCTL must reimburse it to us. Even by their own admission, Trade interests were not consulted for the en-bloc movement.

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

(i). There were discussions; but, the final decision was taken by the CCTL unilaterally. Objections / points raised (for example, what is GLD) in the discussions have not yet been clarified.

(ii). The P.N. was for movement of (old) containers congesting the yard. It was wrongly applied to cover even direct delivery of boxes from vessels.

(iii). Direct delivery of container was not given. Unnecessarily they were required to be shifted to the CFS. Why should we pay extra? Even in the future why should we pay extra?

(iv). SSR was not really a ‘request’. A situation was created to compel us to ‘request’.

(v). In case of IMDG cargo the CHPT used to levy the special charges selectively whereas the CCTL levies it on all cargo. [The CCTL has
clarified that there was a mistake made in two such cases which has since been rectified. ]

**The Chennai Custom House Agents Association (CCHAA)**

(i). We were never ‘consulted’. We were only ‘informed’.

(ii). Customs has been made a *fait accompli*. The problem raised was about yard congestion. It was subverted to cover even off the hook deliveries. Delivery was denied at the yard even on duty paid (old) containers.

(iii). The P.N. was about congestion at the yard. The CCTL concentrated on movement from hook point to CFS. It is illegal.

(iv). Delay was by the CCTL. Why should users pay demurrage?

(v). The CCTL has no user orientation. They are only revenue oriented.

(vi). Delays due to detention for chemical examination shall not be charged. The CCTL must absorb this cost.

(vii). Definition of day is Midnight to Midnight. It is not co-terminus with shifts and, therefore, it causes anomalies. Please sort out this matter.

(viii). The arrangement between the CONCOR and the CCTL has hefty tariff implications. It must be examined.

(ix). There is no mention in the CHPT Scale of Rates about SSR and, therefore, it is not covered by the interim Order of the TAMP. It must be halted and all collections must be refunded.

(x). They refuse to take cash payments because of suspicion about fake notes. They insist on ‘pay orders’. This is unconstitutional and disrespect to the country. The CCTL must be duly instructed.

(xi). Users shall not be held responsible for the time taken by Customs to test. Hence no demurrage shall accrue.

**The Hindustan Chamber of Commerce (HCC)**

(i). There was a meeting at the HCC. But, no action was taken on the points made. We complained to the Ministry of Shipping (MOS). The MOS asked their CMD to go to Chennai and hold a meeting with users. They held a meeting then.

(ii). The Concession Agreement (CA) says, they have to follow the systems and procedures of the CHPT. Any significant change can only be with the prior approval of the Licensor.
(iii). ‘Discount’ is on volume. ‘Rebate’ is on performance. ‘Waiver’ can be given only by the port. The CCTL says they cannot give waivers.

(iv). As per the TAMP Guidelines, user is not responsible for delays caused by the port. Here, all the delay was caused by the CCTL. The users shall not be charged for that.

(v). If the CCTL charges rates not approved by the TAMP, the Concession Agreement (CA) provides for termination of lease by the CHPT.

(vi). Destuffing charges of Rs. 375/- is for a whole container. But, they charge more once on sample checking; and, again, on the whole container.

(vii). The CCTL’s whole attitude is wrong. It is hostile and totally money oriented.

(viii). The CCTL’s CMD said that they would waive demurrage if the CHPT has no objection. The CHPT has no locus standi in demurrage. The CCTL must waive demurrage.

**The Southern India Chamber of Commerce and Industry (SICCI)**

(i). We fully endorse views of the HCC and MCCI.

(ii). There were no meetings with users about procedures at the Terminal. The discussion was all about removing the congestion and the congestion surcharge.

(iii). In a revenue sharing situation, both the parties shall be concerned about user interests.

**The Sea Food Exporters Association of India (SFEAI)**

(i). 90% of reefer containers are from our side.

(ii). We lose Rs. 60,000/- per container per month for delay in shipments. The CCTL has delayed it. They must bear the burden.

(iii). The CHPT rates for reefer containers are higher than the TPT rates. Why should the CCTL increase it further?

(iv). The charges for reefer containers shall not be denominated in dollar terms.

**The Tamil Chamber of Commerce and Industry (TCCI)**

(i). There are unnecessary controversies due to ambiguities. The SSR is responsible for this. We hope there will be no SSR in future.
(ii). Demurrage was due to delay in delivery. The request for refund of demurrage collected must be conceded.

(iii). The TAMP must fix accountability of the CCTL in the Scale of Rates. Delays in delivery must be on the CCTL account.

M/s. ITC Bhadrachalam Paperboards Limited

(i). We are a major container user in Chennai.

(ii). We are happy with the change. We welcome the CCTL. Our representation is only about the past period i.e. 30 November 2001 to 26 December 2001.

(iii). We have given a detailed representation. Containers were delayed because of congestion/confusion. It is not our fault. We should not be held liable.

(iv). The CCTL had a special arrangement with the CONCOR. But, only fresh containers were moved from the hook point itself. Congestion was at the yard. Containers continued to lie there gathering ground rent and demurrage. We have paid Rs. 75.0 lakhs. All this must be refunded.

(v). Our containers were at the yard. We had paid customs duty. Customs PN referred to delivery of duty paid containers on priority. Even then there was no delivery. Duty paid boxes were moved to CONCOR CFS even 15 days after the PN.

(vi). The CHPT used to clear 300 containers per day. In the first month, the CCTL with its best effort initially was able to clear 150 containers per day. How can we be held responsible for delay with such a low level of operation?

(vii). Allow retention of containers at the yard for a reasonable period of 7 days and then deliver from the yard. Thereafter, remove it to any place of the CCTL's choice.

CONCOR

(i). Our involvement was with respect to a Memorandum of Understanding (MOU) with the CCTL. Otherwise, we fix our own tariff.

(ii). The CHPT tariff has not been automatically extended to our CFS. We are charging as per our MOU with the CCTL.

(iii). Our tariffs are higher than the CHPT tariffs. By adopting the CHPT rates, we were charging less. The rates levied included charges for transportation and handling.
(iv). Consultative meetings with users were held. Decisions were no doubt not taken there. But, problems were discussed, and concerns were addressed.

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

(i). So many organisations have made so many serious complaints. Something is wrong, somewhere. The TAMP must concern itself.

(ii). All the issues raised have tariff implications. The TAMP must go into all of this.

(iii). The CCTL is in a monopolistic position hence may be they feel free to behave as they please. In a competitive situation, they could not have done that.

**Indian National Shipowners’ Association (INSA) & Shipping Corporation of India (SCI)**

(i). We have not been contacted by the CCTL at all. Only the CSLA has been in the picture.

(ii). We agree with the various comments made by different Chambers.

(iii). They claim greater efficiency. We concede improvement in efficiency. But, that should not result in increased cost. Their efficiency should lead to reduction in cost.

(iv). It is their responsibility, in terms of the MPT Act, to discharge, store and deliver cargo. They must not pass on everything to users.

**The Chennai Port Trust (CHPT)**

There was a meeting. The CMD of the CCTL did talk about waiver of penal charges. We have not been approached. If we are approached for a waiver, we will have to go to the Board.

**The Chennai Container Terminal Limited (CCTL)**

(i). The problem was all in the initial period. There were genuine transitional problems. We are willing to review and (if necessary) refund.

(ii). How can they object that each of their Members were not addressed. We can and do deal only with Associations.

(iii). The CCHAA/CFSA discussed with the Customs. They left it to the Customs to draft and issue the P.N. It was not our doing.
(iv). SSR becomes necessary when handling is required to be done outside our operating procedure. There is no compulsion. We have documentary proof.

(v). The income from SSR is a small percentage of our revenue. It is a great inconvenience to us. We are not doing it for our benefit; it is only for user's benefit.

(vi). The itemised charges are all taken from the CHPT Scale of Rates. There can be some discrepancies in the figures indicated. But, we are collecting only the correct figure. If there is any excess collection, it will be refunded.

(vii). Inspection inside the port is a right. Where is the question of making a special service request for that?

6. The CSLA has offered the following main points with reference to the submissions made by the CCTL at the joint hearing:

(i). The TAMP is quite right in not involving itself in detailed operational issues at the CCTL or any other terminal, except insofar as such issues have tariff implications.

(ii). Even though the CCTL has undoubtedly raised its game since it took over the management of the terminal, operational problems still remain.

(iii). The Lines, agents and more importantly the trade have expressed clear dissatisfaction with the response of the CCTL to the customers' complaints.

(v). The services offered by the CCTL neither gives value for money nor is it cost effective. The CCTL behaves like a monopoly supplier.

7. As agreed in the joint hearing the CCTL has furnished a copy of the MOU signed by the CCTL with the CONCOR about the movements from CCTL to the CONCOR CFS. It has also furnished a brief note in response to various issues raised at the joint hearing. It has reiterated some of the clarifications given by it earlier. In addition to these some of the main points given by the CCTL in the brief note are summarised as follows:

(i). The container trade in Chennai is structured such that there are many interested parties as compared to the other ports. As the requirements of these parties are never the same, there are often times when decisions taken are not liked by one party or the other. Thus, the CCTL followed the policy of hearing everyone and then reaching a decision that best suited the situation.

(ii). Inspection at the ‘O’ yard was not permitted due to restriction of yard space. Subsequently, after receiving representations from the trade
the inspection at the ‘O’ yard was allowed. It is to be noted that only 5% of all the FCL’s are inspected at the ‘O’ yard.

(iii). Sometimes even to get one parcel for Customs inspection the entire container has to be destuffed. Thus it has to deploy an entire gang as stand-by in addition to incurring the other fixed costs. In view of this it is forced to levy the full stuffing/destuffing charge. There was complete agreement as regards levy of stuffing/destuffing charge for the entire box (This was stated at the joint hearing.)

(iv). The number of direct delivery of boxes from the hook was not 50% as stated by the CONCOR; but, much lower. This was done with the single objective of reducing the prevailing congestion.

(v). We have borne the cost of movement of container to the CONCOR. The representative of the CONCOR has also confirmed this at the joint hearing. The MOU with the CONCOR provides that the CCTL shall compensate the CONCOR for any loss arising from this en-bloc movement.

8.1. The West Coast Paper Mills Limited has subsequently sent a representation stating that as agreed at the joint hearing all the relevant papers were submitted to the CCTL for consideration of waiver penal charges. In response to this the CCTL has clarified that it will be able to waive only 63% of the penal charges since the CHPT which collects 37% of the gross revenue, has turned down the request to waive its share.

8.2. Some of the users have also given comments on the application for separate tariffs for its operations proposed by the CCTL. Since these issues have been dealt with in the Order passed by this Authority on 6 March 2002 relating to fixation of tariffs for the container terminal operations at the Chennai Container Terminal these have not been included in the instant case.

9. With reference to the totality of information collected during the processing of this case and based on the arguments advanced at the joint hearing, the following position emerges:

(i). This Authority does not ordinarily interfere in operational matters per se. Nevertheless, when operational procedures introduced gives rise to tariff implications, this Authority has to adjudicate on such matters.

(ii). The application of the CCTL for fixation of tariffs based on its own estimates and costs for container operations at its terminal has already been disposed of by this Authority and a separate Scale of Rates for the CCTL has been notified. This case is confined only to some of the incidental and procedural issues relating to the initial phase of operation of the terminal. That being so, the issues raised by different users about the CCTL tariff application are not relevant to this
proceeding as they have already been considered while notifying the separate Scale of Rates for the CCTL.

(iii). Some of the users have alleged that the CCTL has not at all consulted the users before introducing its (revised) operational procedure. When the CCTL has listed out the various dates when it consulted different user-groups, the objections are that decisions taken by the CCTL were unilateral; no minutes of the meeting was circulated; all members were not invited; etc.

As has been pointed out by the CCTL, it held consultations with users to assess their viewpoints on different issues. It is to be recognised that perfect understanding between all concerned on all issues may not be possible. Since the CCTL is to operate the terminal, it has to take its decisions.

This Authority is constrained to observe that some of the issues raised by some users in this case are too trivial and in some places bordering on hostility towards the CCTL. The users must also appreciate the problems temporarily faced by the CCTL in the transitional phase and try to be accommodative.

(iv). From the date of its taking over of the Chennai Container Terminal till a separate Scale of Rates for its operations was notified, the CCTL was authorised to levy charges based on the existing CHPT tariffs. One of the main issues agitated by the users is about the charges realised by the CCTL for Special Service Request (SSR). It has been argued that the charges realised are totally new and clearly unauthorised. Even though the SSR covers various situations, it clearly emerges from the clarifications offered by the CCTL that it has gone out of the way to provide these services on special requests; and, the activities involved are primarily lift on / lift off and transportation within the terminal. And, the CHPT Scale of Rates contains specific charges for these components of services. While there can be no denial of such services physically provided by the terminal operator, the argument can be that they should form part of the terminal’s services for which a composite charge is paid. It is noteworthy that the CHPT Scale of Rates identifies specifically the services to be provided against the levy of such a composite handling charge; the services covered under the SSR are not such identified services. That being so, it is unreasonable to expect a terminal operator to provide free-of-cost services required by the Trade. Considering the fact that the charges levied by the CCTL are based on notified tariffs, there cannot be any objection to admissibility of such levies. The CCTL has admitted that there was some discrepancy in the tariff applied in one or two cases and agreed to rectify them by refunding the excess collection.

(v). The MCCI and the CCHAA have objected to shifting of containers to O-Yard for Customs inspection. It is to be recognised that Customs
inspection cannot take place at the normal Storage Yard or at the Gate. There has to be a designated place for such inspection. Further, it is a matter for the Customs to decide on the place where it will carry out such inspections. It is not clear how a terminal operator can unilaterally decide on such location. Incidentally, the CHPT has also indicated that containers were inspected at a separate specified Yard by the Customs even when the terminal was operated by it. In shifting the containers to the O Yard, the CCTL has provided additional transportation, lift on, and lift off; and, such services have been charged as per the notified tariffs. That being so, there does not appear to be any wrong application of the Scale of Rates by the CCTL.

(vi). Another issue posed for consideration is about the charges levied for sample checks by the Customs. Some of the users have pointed out that the rate of Rs.375/- per TEU for stuffing / de-stuffing is for the services provided to the whole container; and, in sample checks, the Customs draws out only two or three packets. In this circumstance, levy of charges prescribed for stuffing / de-stuffing of a full container is not justifiable.

In the Scale of Rates notified for the CCTL, this Authority has already prescribed stuffing/ de-stuffing charges for half-a-container. Such a prescription was not available in the CHPT Scale of Rates.

In Customs sample checks, the contents are to be drawn out and again put back. This means that there is one operation of de-stuffing and one operation of stuffing. Even though the Customs may physically verify contents of only a few packets, the samples are drawn at random which necessitates removal of several others to gain access to the identified samples. As has been pointed out by the CCTL, it has to deploy a full complement of labour for this operation so that samples identified by the Customs can be taken out from the container and again the contents can be repositioned properly after inspection.

Here, again, there does not appear to be any wrong application of the (then) Scale of Rates by the CCTL.

(vii). The HCC has pointed out that the Concession Agreement requires the CCTL to follow the systems and procedures of the CHPT and any significant change can only be introduced with the approval of the Licensor. We do not find any significant change in operational procedure giving rise to tariff implications have been made by the CCTL. In any case, enforcing the provisions of the Concession Agreement is not the responsibility of this Authority.

The HCC has also pointed out another provision in the Concession Agreement providing for termination of the License (by the CHPT) if the CCTL levies charges not approved by this Authority. This Authority does not find any wrong application of the Scale of Rates by the
CCTL. Even if the CCTL had levied unauthorised charges, as has already been pointed out, the aggrieved party has to approach the Licensor for taking appropriate action for termination of the License.

(viii). Almost all the users have objected to the procedure adopted by the CCTL to move containers en bloc to the CONCOR CFS in view of delays and additional cost suffered by them.

When the CCTL took over the container terminal from the CHPT, there was a congestion in the Container Yard. The users have also acknowledged this fact. It has to be recognised that congestion in the yard was not the sole making of the CCTL; it was an inherited legacy. In any project, irrespective of its magnitude, there may be some teething problems in the initial phase. In the CCTL project, the transition was abrupt and that too under a relatively hostile circumstance. These factors also add up to some unanticipated problems in the initial phase. The CCTL has honestly admitted such unforeseen problems erupting in the initial phase. In cases like this, such eventualities can be avoided if the handing over of operations was carried out in a phased manner irrespective of the legal and technical take-over by the Licensee on the appointed day.

As has been pointed out by the CCTL, the alternate course of action available to it would have been to close down the terminal temporarily immediately on take over; and, to resume operations only after clearing the congestion in the yard. This option would not have been in the interests of all concerned.

It is a fact that the storage space available in the Chennai Container Terminal is limited. Recognising this fact, this Authority has also increased the storage charges for containers in the separate Scale of Rates already notified for the CCTL.

It does not appear to be an unreasonable arrangement, given the circumstances encountered by the CCTL at the material time, to shift the containers to an off-dock CFS. That the congestion was totally cleared by end-December 2001 shows the efficacy of the approach adopted by the CCTL in the initial phase. Undoubtedly, it goes to the credit of the CCTL to bear the cost of transporting the containers from the terminal to the CONCOR CFS. In its attempt to maintain reasonableness, the CCTL has also ensured that the CHPT charges are levied by the CONCOR even at its CFS. It is noteworthy that the CONCOR rates are higher than the CHPT rates as admitted by the CONCOR at the joint hearing.

(ix). At the joint hearing, the CCTL has offered to review on a case-to-case basis for refunding storage charges paid by the users in the initial phase when the container yard was congested. As has already been held by this Authority in many other cases, the guiding principle in
settling such cases has to be that users shall not be made responsible for delays caused by the port / terminal.

(x). In the initial phase of operation when the yard was congested, there were two scenarios of clearance of containers. The containers which arrived after the CCTL had taken over the terminal were sent directly to the CONCOR CFS for effecting delivery. The other category was those containers which remained in the yard when the CCTL took over the terminal. As has been pointed by the ITC Bhadrachalam Limited, the second category of containers was not accorded any priority in effecting delivery either at the CCTL terminal itself or for moving to the CONCOR CFS.

Some of the users have alleged that permission granted by the Customs for en bloc movement of containers to the CONCOR CFS was only in respect of old containers whereas the CCTL had chosen to move even the fresh arrivals. This is not an issue for this Authority to interfere with. If there is any breach of the permission granted, it is for the Customs to take necessary action against the defaulter.

It is relevant here to remember that, as has been clarified by the CCTL, there was no space to stow new arrivals due to pile up of import containers. Thus, after careful consideration of the situation and only after discussions with the relevant trade bodies, the decision was taken to move the boxes directly from the hook to the CFS for a few vessels.

(xi). In a case relating to the JNPT CFS, this Authority had held that free time on containers shall commence only after they reached the CFS. This principle will equally apply in the cases of containers arriving after the CCTL had taken over the terminal. In such cases, the free period shall commence only after the containers reached the CONCOR CFS.

(xii). As admitted by the CCTL, there has been some genuine delay in moving those containers which were lying in the yard at the time of the CCTL take over. This delay has primarily been attributed to non-availability of transport and the necessity to move the fresh arrivals to the off-dock CFS for want of storage space in the yard. In such cases, it may be reasonable to treat the period from the date of the concerned importer filing an application for delivery (after observing all formalities) till the date of making the containers available at the CONCOR CFS or in the CCTL yard itself for delivery as free period for purposes of levying storage charges. It is, therefore, reasonable for the CCTL to refund storage charges on such containers levied even during such free period.

(xiii). The CCTL has argued that it can refund storage charges in admissible cases to the extent of only 63% of the charges realised since the balance has already been remitted to the CHPT under the revenue-sharing arrangement envisaged in the Concession
Agreement. It is to be recognised that refund of storage charges is to be made since they have been collected for a period when there was a congestion in the yard for which users cannot be held responsible. Since the charges levied cannot strictly be called as an admissible revenue to the CCTL, it may not be reasonable for the CHPT to seek its share from that income. Even if these charges were admissible and realised in terms of the Scale of Rates, in consideration of the circumstances, the CHPT must sportingly agree to refund its share of 37% in all such cases where the CCTL decides, subject to the guidelines now prescribed, to refund the storage charges levied on such containers. After all, as has already been mentioned, the CCTL had only inherited a congested yard. This Authority, therefore, directs the CHPT to refund its share of storage charges remitted by the CCTL on account of such containers.

(xiv). The users have also objected to levy of transportation and lift on / off components of the composite handling charges in the case of containers directly moved to the CONCOR CFS. It is to be admitted that the services were not provided within the terminal. But, by virtue of the arrangement introduced by the CCTL, the CONCOR CFS has to be seen as an extension of CCTL yard. From the users point of view, all services required to make their containers ready for delivery were provided against the payment made by them to the CCTL. That being so, it will not be necessary for the CCTL to refund any part of the handling charges on containers directly moved to the CONCOR CFS.

(xv). Some of the users have also raised an issue about excess recovery of THC by Lines. This Authority will not go into the issues concerning THC levied by the Lines. Nevertheless, it has already come into light in a proceeding relating to the Mumbai Port Trust that THC is reimbursement of costs incurred by Lines; and, on-board stevedoring cost forms part of ocean freight under liner terms.

(xvi). The CCHAA has raised an issue about changes in the definition of ‘shifts’ and ‘days’ made by the CCTL. Clause (k) of Chapter-I; Book-I of the CHPT defines ‘shift’ and ‘day’ for the purposes of their application in the Scale of Rates. The interim arrangement Ordered by this Authority required the CCTL to follow the CHPT tariffs including the existing conditionalities governing the application of tariffs. Since the CHPT Scale of Rates specifies that ‘day’ shall be reckoned from 6 A.M. of a day to 6 A.M. on the following day, the CCTL could not have introduced a new definition of ‘midnight to midnight’. Likewise, irrespective of the shift timings adopted by the CCTL for operating its terminal, the timings prescribed in the CHPT Scale of Rates will be applicable for the purpose of levying the CHPT tariffs. The CCTL is required to review its billing made and refund excess collections, if any, on this account.

10. In the result, and for the reasons given above, and based on a collective application of mind, this Authority decides as follows:
(i). There is no evidence of any wrong application of the Scale of Rates by the CCTL during the initial phase of its operation.

(ii). (a). The CCTL shall consider refunding of storage charges levied on containers during the period when its yard was congested.

(b). In the case of new containers arriving after the CCTL had taken over the terminal, the free period shall commence only after the containers reached the CONCOR CFS.

(c). In the case of those containers which remained in the yard at the time of the taking over of the terminal by the CCTL, the period from the date of the concerned importer filing an application for delivery (after observing all formalities) till the date of making the containers available at the CONCOR CFS or at the CCTL yard itself for delivery shall be counted as free period for purposes of levying storage charges.

(iii). The CHPT shall refund its share (37%) of revenue in all such cases where the CCTL allows, subject to the guidelines now prescribed, for refund of the storage charges levied on such containers.

(S. Sathyam)

Chairman

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