Tariff Authority for Major Ports

NOTIFICATION

In exercise of the powers conferred by Sections 48, 49 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal of the Jawaharlal Nehru Port Trust for allowing levy of *ad hoc* tariffs for the services for which rates are not available in the notified Scale of Rates and introduces an arrangement in this regard commonly for all the major port trusts and private terminals therein as in the Order appended hereto.

( S. Sathyam )
Chairman

The Jawaharlal Nehru Port Trust - - - Applicant

ORDER

(Passed on this 8th day of April 2002)

This case relates to a proposal from the Jawaharlal Nehru Port Trust (JNPT) for allowing the Port Trusts to levy *ad hoc* rates for handling of certain cargo or providing specific services for which rates are not available in the notified Scale of Rates, in anticipation of approval by this Authority of its proposal for fixation of such rates.

2. In its proposal, the JNPT has made the following points:

   (i). Sometimes exporters / importers and port users approach the Port Trust for handling of certain cargo or providing special services for which rates are not available in the notified Scale of Rates.

   (ii). In such circumstances, it is possible that the port can work out the rate taking into consideration the TAMP guidelines. Even if such a rate is acceptable to the client, the port cannot immediately start operating the rate for want of the TAMP’s approval. Under such circumstances, the port proposes a reasonable rate for permitting specific services after examining the viability of the requests received and sends the same to the TAMP for consideration.

   (iii). As per the procedure currently adopted by the TAMP, the process of scrutiny, evaluation, final decision and Gazette Notification takes on an average at least three to six months.
(iv). It is proposed that in such kind of proposals which are acceptable to a client, in order to facilitate taking speedy commercial decisions, the port may be allowed to charge with immediate effect the rates it has proposed to TAMP upto a period of three months.

(v). Incase the decision of the TAMP is not communicated even after three months, the specific services will continue to be performed by the Port at the proposed rates till a decision is taken by the TAMP on the proposal of the Port.

(vi). The rates approved by the TAMP can operate prospectively.

(vii). The above arrangement will provide the required flexibility to the Port in taking faster commercial decisions.

3. With reference to the proposal of the JNPT, the following position emerges:-

(i). It is noteworthy that the law requires the tariffs levied by the major port trusts / private terminals to be approved by this Authority. The operators do not enjoy any freedom to introduce (even) provisional or ad hoc tariffs.

(ii). Experience has shown that scrutiny of proposals and approval of tariffs by this Authority usually takes at least 3 – 6 months.

(iii). In this backdrop, the JNPT proposal marks an initiative to introduce some flexibility in the system. The idea behind this proposal is, possibly, to avoid a situation of a port trust having to refuse to provide an immediate (new) service required by users for want of a suitable (existing) tariff covering the cost of providing such a service.

(iv). This Authority being a third party neutral regulator has to follow the quasi-judicial process before deciding any of the tariff cases. Notwithstanding the severe staff constraints faced by it, care has been taken to dispose of cases expeditiously. Our experience shows that in most of the cases where delays have occurred they have been due to delays in receipt of comments / clarifications / additional information from port trusts. In the absence of a statutory power to stipulate time limits for submission of documents / information, the only course left to this Authority in such situations is to close the cases. It has to be recognised that such an extraordinary decision will not serve any purpose for the port trusts, and more importantly, for the users in matters relating to representations filed by them.

(v). While this Authority is inclined to approve the proposal of the JNPT, it will be necessary to add that the ad hoc rate to be operated in the interim period must be derived based on the existing notified tariffs for comparable services / cargo; and, it must be mutually agreed upon by the port trust and the concerned user.
(vi). The *ad hoc* rate can be simultaneously introduced alongwith submission of a formal proposal with complete justification to this Authority. The final rate(s) fixed by this Authority will ordinarily be effective prospectively. The interim rate adopted in an *ad hoc* manner will be recognised as such unless it is found to be excessive requiring some moderation retrospectively.

(vii). By way of abundant caution, it is to be mentioned that the authorisation to levy *ad hoc* rates is confined only to cases where such rates are individual – user – specific. It can not be for common user facilities or for revision of existing tariffs.

(viii). It is possible that with the introduction of *ad hoc* rates there can be some laxity on the part of the major ports / private terminals to furnish requisite details to this Authority for setting final tariffs. In such cases, this Authority will be constrained to withdraw the general authorisation given to levy *ad hoc* rates and to order refund of the levies made, if the details required by the Authority are not furnished within the time limit stipulated.

(ix). It has been the stated policy of this Authority to adopt uniform principles, approaches, and norms in the matter of tariff fixation at the Major Ports. It is, therefore, appropriate to prescribe the arrangement being ordered in the context of the proposal of the JNPT to the other major port trusts also and to the private terminals therein.

4. In the result, and subject to the observations made in paragraph 3 above, this Authority approves the following arrangement commonly for all the major port trusts and the private terminals therein:

(i). Wherever a specific tariff for a service / cargo is not available in the notified Scale of Rates, the major port trusts / private terminals can submit a suitable proposal to this Authority.

(ii). Simultaneously with the submission of proposal, the proposed rate can be levied on an *ad hoc* basis till the rate is finally notified by this Authority.

(iii). The *ad hoc* rate to be operated in the interim period must be derived based on existing notified tariffs for comparable services / cargo; and, it must be mutually agreed upon by the Port / Terminal and the concerned user.

(iv). The final rates fixed by this Authority will ordinarily be effective only prospectively. The interim rate adopted in an *ad hoc* manner will be recognised as such unless it is found to be excessive requiring some moderation retrospectively.

( S. Sathyam )