

No. 314

New Delhi, the 28 November, 2001

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 disposes of a proposal of the Indian Ports Association for a reduction in the rate of penal interest leviable on delayed payments / refunds made by users / port trusts and prescribes a revised range of penal interest rates for common adoption by all the major port trusts as in the Order appended hereto.

(**S. Sathyam**)

Chairman

Tariff Authority for Major Ports

No.TAMP/8/2000-Genl.

The Indian Ports Association (IPA)

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Applicant

ORDER

(Passed on this 5th day of November 2001)

This case relates to a proposal sent by the Indian Ports Association (IPA) requesting for a reduction in the rate of penal interest on delayed payments / refunds by users / Port Trusts.

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

- (i). The penal interest for delayed payment / refunds approved by the Authority in its Order No.TAMP/8/2000-Genl dated 23 February 2000 may be fixed by individual Ports within a range between a minimum of the State Bank of India notified rate plus 1% and a maximum of 15% per annum.
- (ii). Delays in refund may be counted only after 30 days from the date of completion of the services instead of 20 days as mentioned in the Order of Authority.

3.1. One of the Guidelines adopted at the Workshop held in Chennai in February 1998 was to the effect that the Port Trusts shall pay penal interest on delayed refunds. Based on the guideline adopted, this Authority passed an Order on

4 February 2000 for uniform adoption by all the Major Port Trusts. This Order was notified in the Gazette of India on 23 February 2000.

3.2. In the said Order, the Authority decided the following:

- (i). The user shall pay penal interest @ 24% per annum on delayed payments.
- (ii). Likewise, the Port Trust shall pay penal interest @ 24% per annum on delayed refunds.
- (iii). The delay in refunds will be counted only 20 days from the date of completion of services or on production of all the documents required from the user, whichever is later.

4.1. In response to this Order, various port trusts had submitted representations against the interest rate prescribed. These ports and also the other ports were advised to discuss the subject in the forum of the IPA for a coordinated view of all the Major Port Trust to adopt a uniform interest rate which should be applied equally on delayed payments made by the port-users and delayed refunds made by the Port Trusts. The IPA accordingly, discussed the matter and conveyed its views that each port should have the freedom to decide its policy.

4.2. The matter was again considered by this Authority in its meeting held on 16 May 2001 in the backdrop of the opinion given by the IPA and the views sent by some of the Port Trusts and the following observations were made:

- (i). The question about the competence of the Authority to prescribe penal interest rate for delayed payment / refund in the Scale of Rates of Major Port Trusts had already been settled by this Authority through its Order dated 19 July 2000.
- (ii). The intention behind this Authority's Order dated 4 February 2000 was to prescribe a uniformity of penal interest payable on delayed payments both ways i.e., by port users as well as by the Port Trust. In the Order, this Authority prescribed a 24% interest for such cases taking into consideration the penal interest being charged for the year 1999-2000 by the Income Tax Department for delayed payments. This Authority had already taken a decision that if the intention behind the Order was correctly understood in its true spirit, this Authority was not concerned about the time limit or the penal interest rate. Whatever was the rate of interest such prescription would be uniformly applied to both sides.
- (iii). Even though the stated position of this Authority has been that it is not concerned about the rate of penal interest, it can not be left to the individual Port Trust to decide such rates. There has to be uniformity among all major Port Trusts in this regard. On this consideration only, this Authority had decided to advise the ports to discuss the matter in the forum of IPA for a coordinated view of all the major Port Trusts to

adopt a uniform interest rate. The reply then given by the IPA did not address the issue referred to it. Legally, each port can not have freedom to decide its policy relating to tariff matters. Since the IPA failed to recommend any coordinated view on a uniform interest rate, this Authority *suo motu* decided on the rate of the penal interest with reference to reduction in commercial rates by banks and the Income Tax Department.

4.3. After considering all the issues involved, this Authority passed an Order on 16 May 2001 partially amending its Order dated 4 February 2000 as follows:

- (i). The user shall pay penal interest @ 18% p.a. on delayed payments.
- (ii). Likewise, the Port Trust shall pay penal interest @ 18% p.a. on delayed refunds.

5. The Mormugao Port Trust (MOPT) submitted a proposal to grant 7 clear working days as grace period from the date of the receipt of the bill to the port users. The proposal of the MOPT was considered after consultation with all other Major Ports for adoption of a uniform prescription in this regard. An Order was passed on 30 August 2001 amending the earlier Order dated 4 February 2000 (partially amended by Order dated 16 May 2001). This Authority in its Order dated 30 August 2001 approved the following:

“ The delay in payments by users will be counted only 10 days after the date of raising the bills by the Port Trusts. This provision shall, however, not apply to the cases where payment is to be made before availing the services / use of Port Trust’s properties as stipulated in the MPT Act and/or where payment of charges in advance is prescribed as a condition in the Scale of Rates.”

6. The Jawaharlal Nehru Port Trust (JNPT) has now submitted a separate proposal requesting to reduce the rate of penal interest to 12.5% and also to consider 10 days grace period from the date of preparation of invoices to the port users. In its proposal, the JNPT has made the following points:

- (i). In the past, no penal interest was charged on delayed payments and on refunds.
- (ii). The port users, therefore, are requesting for not implementing the Order relating to charging penal interest on delayed payment/refunds and also stated that 18% interest is on the higher side.
- (iii). The JNPT also agrees the views of the users and its Board of Trustees have decided to approach the TAMP to reduce interest at a rate that is 1% higher than that of SBI’s prime lending rate which is at present 11.5%. The JNPT, has, therefore proposed 12.5% interest on delayed payment / refunds.

- (iv). The JNPT has also recommended allowing 10 days grace period from the date of the invoice to the port users for effecting the payment.

7. With reference to the proposals now made by the IPA and the JNPT, the following position emerges:

(i). Earlier, this Authority advised all the port trusts to discuss the matter in the forum of the IPA to formulate a coordinated view about adoption of uniform penal interest rate, as also the time limit beyond which the penal provisions will apply. In response, the IPA then conveyed its view that each port should have the freedom to decide its policy. Since the reply given by the IPA did not address the issue referred to it, and each port could not legally have freedom to decide its tariff policy, this Authority proceeded *suo motu* to decide on the rate of penal interest and reduced it from 24% p.a. to 18% p.a.

Now the IPA has come up with a specific suggestion on the rate of penal interest. The proposal of the IPA is to prescribe a range of interest rates and allow individual port trusts to choose the interest rate within the range prescribed.

(ii). It is to be recognised that the intention behind the Order of this Authority is to prescribe a uniformity of penal interest payable both ways. The idea is only to emphasise the principle of level playing field. This Authority has already taken a view that if the intention behind the Order is correctly understood in true spirit, it is not concerned about the time limit or the penal interest rate. Even though the rate of penal interest does not matter much, it was the opinion of this Authority that it could not be left to an individual Port Trust to decide; and, there must be a uniformity among all major port trusts in this regard. Viewed in this perspective, the proposal of the IPA to allow freedom to the port trusts to select the interest rate of their choice from the range to be fixed may not be in line with this Authority's approach to adopt uniform principles and concepts in the matter of tariff fixation at the major ports.

It may be useful in this context to recapitulate the pith and substance of this Authority's thinking on this subject:

- (a). Whatever may be the penal rate, it shall be the same for both the port trusts and the port-users.
- (b). Whatever may be the rate, it shall be the same at all the port trusts.

The port trusts have, willingly or unwillingly, accepted this Authority's intervention in this matter and, have also accepted the need to have the same rate both ways on considerations of equity. But, because of local peculiarities caused by varying financial features, they have not been able to come an agreement about a common rate. In recognition of this ground reality, this Authority is inclined to veer away from its earlier stand and introduce some flexibility in the arrangement to promote effective implementation of its Order.

(iii). The fictitious position created by addition of penal interest on doubtful debts is also a relevant point for consideration. Levy of penal interest on delayed payment is, however, a well-established commercial practice. Just because some of the

debts have gone bad or doubtful, there is no reason to abandon such an established practice.

(iv). The IPA has proposed to reduce the rate of penal interest to 15% and fix it as the ceiling limit. It is noteworthy that the penal interest rate has recently been reduced from 24% p.a. to 18% p.a. Since a range of penal interest rate is to be prescribed, it may not be necessary to reduce the penal interest rate already in force which will serve only as a ceiling limit in the revised prescription. It is to be recognised that a port trust will have the flexibility to adopt a penal interest rate within the range and it can be less than 18% p.a.

(v). Penal interest must be viewed as a punitive measure to enforce a disciplined cash and debt management. It may not be correct to view it only as the opportunity cost of funds blocked. In this backdrop, prescribing a penal interest rate only at 1% above the SBI's PLR, as proposed by the IPA, does not seem to achieve the desired result. It has to be recognised that rarely a borrower can obtain loans at the PLR. Further, if penal interest rate is closer to commercial borrowing rates, then there may be a tendency to view (by the other party to the transaction) the Port Trusts / Users as a depository or lending agencies. That being so, this Authority finds it reasonable to prescribe penal interest rates within a range between the minimum of 2% above SBI's PLR rate and a maximum of 18% p.a. The Port Trusts can be allowed to choose the rate convenient to their purpose within this range subject to the following understanding:

- (a). The penal interest rate chosen will apply to both the Port Trusts and the port-users equally.
- (b). The port trusts must exercise their option and choose a rate within the range prescribed. Any change thereafter can only be with this Authority's approval.
- (c). The arrangement relating to introduction of a range itself will be reviewed after two years to examine whether a common rate for all the Port Trusts can be prescribed.

(vi). The IPA has also proposed that the time limit to count delay in refund be enhanced to 30 days from the date of completion of 30 days of service. This Authority has already allowed a time limit of 20 days for processing of such refund claims. The time limit already allowed is liberal; any further increase in the lead-time is not necessary. It is also relevant that the IPA's proposal is to consider the lead-time from the date of completion of services. For a port to process the refund claims the completion of services is not as crucial as production of all required documents by the users. In this context only, this Authority has already prescribed that the delay in refunds will be counted only 20 days from the date of completion of services or on production of all documents required from the users whichever is later.

(vii). The JNPT has suggested allowing 10 days grace period from the date of invoice for the port users to make payment. This Authority has already allowed such a grace period vide its Order dated 3 August 2001.

(viii). In this context, it will be relevant here to mention that the Calcutta Port Trust (CPT) and Chennai Port Trust (CHPT) (repeatedly) raised doubts about the competence of this Authority to prescribe a penal interest rate for delayed payment / refund. This issue has already been settled by this Authority through its Order dated 19 July 2000 in respect of the CPT and repeated in the case of the CHPT. In the Order related to the CPT, the following position was clearly brought out:

- (a). The prescription of penal interest made by this Authority did not contravene any of the provisions of the MPT Act.
- (b). An Authority empowered to prescribe rates and associated conditionalities can prescribe penal rates also.
- (c). If the penal interest levied by the CPT (as per its Scale of Rates even before this Authority passed the common adoption Order) was tenable, then the Order passed by this Authority to extend the principle to refunds to be made by the Port was also justifiable.

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

- (i). In partial amendment of its earlier Orders on this subject, the rate of penal interest will be in the range between a minimum of 2% above the Prime Lending Rate of the State Bank of India and a maximum of 18% within which the Port Trusts can choose the rate convenient to their purpose.
- (ii). The penal interest rate chosen will apply to both the Port Trusts and the port-users equally.
- (iii). The port trusts must exercise their option immediately and choose a rate within the range prescribed. Any change thereafter can only be with this Authority's approval.
- (iv). The arrangement relating to introduction of a range itself will be reviewed after two years to examine whether a common rate for all the Port Trusts can be prescribed.

8.2. All the major port trusts are directed to amend their respective Scale of Rates to include the revised rate of penal interest (to be) chosen by them.

8.3. This Order will come into effect on expiry of 15 days from the date of its notification in the Gazette of India.

(**S. Sathyam**)

Chairman

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