Tariff Authority for Major Ports

NOTIFICATION

In exercise of the powers conferred by Section 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby rejects the representation of the Mumbai and Nhava-Sheva Ship Agents’ Association for cancellation of lighterage dues levied by the Mumbai Port Trust as in the Order appended hereto.

(S. Sathyam)
Chairman

The Mumbai and Nhava-Sheva Ship Agents’ Association - - - Applicant

Vs

The Mumbai Port Trust (MBPT) - - - Respondent

ORDER

(Passed on this 21st day of March 2002)

The Mumbai and Nhava-Sheva Ship Agents’ Association (Mansa) has submitted a representation about lighterage dues on foreign and coastal vessels levied by the Mumbai Port Trust (MBPT).

1.2. In its representation, the Mansa has made the following points:

(i). The MBPT is charging lighterage dues at the rate of US Cents 8 per GRT per day and Rs.2.50 per GRT per day or part thereof on foreign-going and coastal vessels respectively.

(ii). Lighterage operations are carried out by the cargo interest by arranging / paying for the barges. The Port does not provide any service to ship owners to justify the charge for a lighterage fee.

(iii). There are no separate lighterage points and ships are anchored at the same positions where they usually anchor while awaiting berth. Normal anchorage charges are US Cent 1 per GRT per day after a 3 days free period.

(iv). Lighterage dues are charged on a per calendar day basis and not on 24-hour basis. In case of non-availability of barges, the lighterage operations often take place between late evening on one day to early morning the next day.

(v). There is no official documentation or supervision by the port for the period vessels carry out lighterage operations. It is, therefore, practically not possible for the Port to
authenticate whether the charges paid are in accordance with its scale of rates. This can give rise to malpractice / arbitrariness of the port officials, which is not desirable.

(vi). The requirement for lighterage and transhipment is entirely that of the shipper / consignee (cargo interest) and vessel owners are required to pay this charge. Almost all these cargoes are being discharged on ‘free out’ basis and all cargo operations are organised and carried out by the shippers / receivers.

(vii). The lighterage charges may be cancelled In view of the reasons stated. Lines are willing to pay the port the normal anchorage dues for the entire stay of the vessel.

2. The representation of the Mансa was circulated to the MBPT and also to the concerned port users for comments. The comments received from them are summarised below:

**Mumbai Port Trust (MBPT)**

(i). It is true that the MBPT is charging lighterage dues on foreign and coastal vessel respectively @ 8 US Cents per GRT per day and Rs. 2.50 per GRT per day or part thereof from the vessels discharging and receiving cargo in midstream at anchorages.

(ii). Lighterage dues are recovered only from the vessels which carry out the discharge operation in stream and the cargo is taken to other minor ports. In the cases of vessels which discharge cargo into barges / boats for subsequent discharge at the MBPT docks, the lighterage dues are not levied.


(iv). The contention of Mансa that the port does not provide any services to the ship owners to justify the charges for lighterage fee is not true. Lighterage operation involves the utilisation of a services in relation to monitoring and control of the movement of the vessels to ensure the safe and unhindered passage of vessels through the water of the MBPT. The MBPT provides facilities like harbour patrolling navigational aids such as lighthouses, signal stations, buoys beacons, boundary pillars and light vessels, etc. All the vessels traversing in the port limits as well as port approaches necessarily utilise the services rendered by Vessel Traffic Management Systems (VTMS) installed at an expenditure of Rs.30 crores.

(v). It is true that Anchorage Charges at 1 US Dollar per GRT per day after 3 days free period is levied for vessels at anchorages for awaiting berth or reasons other than cargo operations. The Scale of Rates provides that for the period of working cargo in lighterage operation no anchorage charges are recovered from the vessels and lighterage dues be collected. Anchorage charges are recovered for the period when the vessel is not discharging / receiving the cargo in stream. Anchorage charges are recovered only after expiry of free period.

(vi). The lighterage dues are charged on a per calendar day basis and not on hourly basis. Since lighterage dues and anchorage fee are recoverable proportionally the provision of ‘calendar day’ is defined common under both the schedules.

(vii). No provision for special supervision by the MBPT officials for lighterage operation has been made till now. Since its introduction no arbitration / dispute has been received by the MBPT towards the levy of lighterage dues. If supervision by the MBPT officials is to be implemented additional posts of staff members and officers have to be created with separate transport arrangements for shore to ship and ship to ship
transportation of staff during the period of lighterage operation in the stream. This will necessarily add to the cost of services.

(viii). Since 1994, the lighterage dues are recovered from the various port users for carrying out lighterage operation. The charges were included in the Scale of Rates.

**Bombay Custom House Agents’ Association (BCHAA)**

(i). There is no reason to why the Lighterage charges should not be collected by the Port Authorities. There must, however, be proper administration and accountability with regard to the charges payable and to prevent malpractice or misuse of discretionary powers by port officials. The statement that the requirement of lighterage and transhipment is solely between the Shippers / Consignee and has nothing to do with vessel owners is incorrect and far from the truth.

(ii). The Lines and the vessel owners carry the cargo, for which sea freight is recovered for movement of cargo from Port to Port so as to ensure that cargo is protected and safeguarded during transit and the same is properly discharged at the discharge Ports. The cargoes are being discharged on free out basis. It is presumed that the said lighterage charges are part of the sea freight; hence if vessel owners intend to transfer the cargo at the lighterages, it is being undertaken for the vessel convenience and not due to any preference sought by the Shippers or Consignee.

(iii). In view of the above, we do not find any reason for the request forwarded by the MANS, who are agents of vessel owners, that need consideration, since Lighterage of the vessel being done for ship convenience solely.

**Bombay Chamber of Commerce and Industry (BCCI)**

The comments given by the BCCI relate to ‘light dues’ imposed by the Government; and, not about the fee in reference levied by the MBPT. Since its comments are not relevant to the issues agitated by the MANS, they are not considered in this case.

3. A joint hearing in this case was held on 24 December 2001 at the MBPT premises in Mumbai. At the joint hearing, the following arguments were made:

**Mumbai and Nhava-Sheva Ship Agents’ Association**

(i). Where is the service to justify the charge? The services they cite are all covered by Port Dues.

(ii). For berth hire they go on one basis: 50%, ‘per day’, etc; but, for lighterage they go on a different basis.

(iii). The entire operation is done by cargo interests. Lighterage point is also chosen by them. Why shall vessels bear the cost?

(iv). Lighterage can be done at anchorage, or in the approaches, or (even) outside. Only in monsoons, when the sea gets rough, the vessel has to come in. Normally, therefore, the possibility of the vessel coming alongside is not there.

(v). Port cannot verify the details behind acceptance of the certificate given by the Master. Is this an acceptable arrangement? There is plenty of scope for manipulation.

(vi). If the MBPT can provide deeper anchorage points, these lighterage vessels will come into the Port. No need to operate at the outer roads. The MBPT will earn more through Port Dues, Pilotage, etc.
In the ILL case, charge was on cargo on a ‘per tonne’ basis. Here they have introduced on ‘GRT basis’. That is why vessels are required to pay (what really the shippers must pay).

Bill of Lading is different from a Master’s certificate. The latter is not a legal document. There is a scope for manipulation. It is better to have fixed slab rates with respect to GRT so that there is no subjectivity.

Mumbai Port Trust,

(i). Our berths are empty. Why should we encourage lighterage operations?

(ii). As regards Calendar Day or 24-hour unit, we will adopt the berth hire logic here also. We will streamline this in the General Revision proposals slated for mid-January 2002.

(iii). Conceding the principle ahead of that will require our Board’s permission.

(iv). We have no control over the transhipment cargo. Shipper may do all the operations. But, the vessel asks for the permission. So, the vessels must pay.

(v). Certificate of a Master of the vessel is a legal document. How can MANSA delink it?

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

(i). The existing Scale of Rates (Port of Mumbai Pilotage, Tug Assistance, Towage Mooring and Other services Fee Order, 1998) contains a provision to levy lighterage dues on mother vessels anchored / occupying a place in stream for working cargo. The said Scale of Rates was approved by this Authority in October 1998. That being so, this tariff item cannot be said to be levied by the MBPT arbitrarily or without legal backing. The question now under consideration is about continuance of this tariff item.

(ii). It is noteworthy that the system of levying charges on vessels which work at anchorages is not unique to the MBPT but is in vogue at many other major ports.

(iii). One can argue that a vessel at anchorage pays anchorage fees for occupation of space; why should it be made to pay higher lighterage dues when it continues to occupy the same space but only carries out cargo operation.

It is to be clarified that anchorage fees are levied during the period vessel is not working cargo. Lighterage dues are levied only for the period vessel works at anchorage. That being so, there is no double recovery of charges for the same period of time.

It is to be recognised that anchorages inside the port or port approaches are generally meant for vessels to wait. Cargo operation is expected to be carried out at the designated berths / jetties. For some reasons, if mid-stream transhipment takes place, a port stands to lose revenue since anchorage fees are far too less than normal berth hire charges. Irrespective of certain compelling reasons like draft restriction, etc. for carrying out lighterage operation, the fact cannot be ignored that a vessel while lighteraging cargo at anchorage carries out a commercial activity. Consequently, it has to pay at a rate higher than the fees prescribed for normal idling.

(iv). As has been pointed out by the MBPT, lighterage dues are not levied from vessels engaged in midstream discharge for reducing the draft to enable its entry into the Docks / Piers of the MBPT. This means, this charge is levied only in the cases of such lighterage operation of cargo meant for other ports. It will be unreasonable to expect a Port Trust to allow free of charge its facilities to be used by vessels bringing cargo for other ports.
(v). The other issue raised by the MANSA is about whether the cargo or vessels interests have to bear this charge. There appears no reason to shift the incidence of this charge to cargo owners bearing in mind the fact that the vessel is engaged in a commercial activity at the anchorage. It is the carrier’s responsibility to deliver goods at the agreed place of delivery and in discharging cargo at anchorages, the vessel can only be seen to discharge its contractual obligation. Even if it is presumed that such operation takes place at the request of the consignee, no one else other than the vessel has agreed with such request. As has rightly been pointed out by the BCHAA, transfer of cargo at the lighterages is undertaken for the vessel’s convenience. Whether contract of carriage is on FIO terms or not is irrelevant since the vessel has to do this lighterage operation primarily due to the fact that it has agreed beforehand to deliver cargo at a place where it cannot perhaps enter in a fully loaded condition.

(vi). The existing Scale of Rates of the MBPT prescribes lighterage dues and anchorage charges on a ‘per day’ basis. The change effected by this Authority in unit of berth hire charges (i.e. reduction from 24-hour basis to 8-hour basis) will equally apply in the cases of lighterage dues and anchorage fees.

While accepting such conversion, the MBPT has requested that the change in the unit of charge may be introduced along with the next general revision/review of the Scale of Rates. It has also separately informed us that its proposal for the next general revision of the Scale of Rates is under final stages of formulation. It is to be recognised that a change in the unit of charge will definitely have revenue implications to the Port; and, an opportunity of revenue adjustment is to be provided to the Port before effecting changes in the unit of charge. This adjustment can be more meaningfully carried out at the time of the next general review/revision of Scale of Rates. Till such time, this Authority finds it reasonable to allow the existing unit of charge to continue. The MBPT is, however, advised to formulate its proposal for the next general review/revision accordingly taking into account the changes to be introduced in the unit of charge of lighterage dues and anchorage fees.

(vii). The MANSA has also complained about the lack of proper documentation and supervision of lighterage operation. The MBPT has admitted that no special supervision is maintained for lighterage operation; and, it goes by the certificate issued by the Master of the vessel to levy the charges. It has also pointed out that this system of working has not caused any complains so far about malpractice/arbitrariness by any port official. Supervision of operations is a Port management function in which this Authority does not like to interfere. Notwithstanding this position, this Authority likes to advise the MBPT to review the existing arrangement and instal a proper mechanism which will pluck possible revenue leakages and also minimise, if not completely eliminate, exercise of discretion by its officials.

5.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority finds that the representation of the MANSA for cancellation of lighterage dues levied by the MBPT does not have force; and, accordingly, it is rejected.

5.2. Notwithstanding the rejection of the representation of the MANSA, its request of change in the unit of levying lighterage dues will be considered at the time of the next general review/revision of the concerned Scale of Rates. The MANSA will, therefore, be well advised to canvas this issue with the MBPT even as the general revision proposals are being formulated.

(S. Sathyam)
Chairman

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