(Published in Part – III Section 4 of the Gazette of India, Extraordinary)

No. 58

New Delhi, the 28 March, 2002

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 hereby rejects the application of M/s. Sea Port Logistics Private Limited for refund of priority berth hire charges levied by the Chennai Port Trust as in the Order appended hereto.

(S. Sathyam)
Chairman

M/s. Sea Port Logistics Private Limited - - - Applicant

Vs

The Chennai Port Trust - - - Non- Applicant

ORDER

(Passed on this 21st day of March 2002)

This case relates to a representation from M/s. Sea Port Logistics Pvt. Ltd. (SEAPOL) for refund of priority berth hire charges collected by the Chennai Port Trust (CHPT).

2.1. The SEAPOL has made the following points in its representation:

(i). A vessel berthed under normal arrival turn does not attract priority berth hire charges; however, the CHPT has wrongly levied these charges in respect of its seven vessels (carrying thermal coal for TNEB) arrived and berthed during the period 31 January 1996 – 28 July 1996. The CHPT subsequently refunded the charges levied in respect of two of the vessels.

(ii). The amount demanded by the CHPT towards the priority berth hire charges was paid by it under protest in view of a threat from the CHPT about stoppage of services to its ships.

(iii). The CHPT was approached several times and the case was argued by furnishing ample evidences and justifications in support of claim of refund of disputed amount of Rs. 9,90,160/-. The CHPT has refused to accept the claim of refund on the plea that others will also claim refund.

(iv). Paragraph 2 of the guidelines issued by the Madras Port Trust (Marine Department) in respect of collection of fee for providing Priority/ Ousting Priority
vide Circular No. 53/11056/94/M dated 15 March 1995 states that “the fee for according priority/ousting priority is not leviable on the vessels where through the necessary directions have been issued for according ‘priority/ousting priority’ but on arrival such vessels are berthed in normal course on their turn.”

2.2. In this backdrop, the SEAPOL has requested this Authority to render justice in the matter arising out of wrong collection of priority berth hire charges by the CHPT.

3.1. In accordance with the procedure prescribed, a copy of the representation was sent to various port users/representative bodies of port users and the CHPT for comments. The comments received from them are summarised below:

**The Shipping Corporation of India Limited (SCI)**

It is not possible to offer any comments on the claim preferred by the SEAPOL because the copies of the letters addressed to the TAMP and the CHPT only state that the vessels were berthed on their normal arrival turn and the amount of priority berth hire charges was paid under protest. It does not include any document in support of their contention that the vessels were berthed on their normal arrival turn.

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

(i) The Port must not penalise the users with its authority. The TAMP is requested to deal with such kind of arbitrary actions taken by the port.

(ii) To arrive at a correct conclusion, the berthing plan during the period in question needs to be scrutinised.

3.2. Despite a reminder, the CHPT has not furnished its written comments.

4. A joint hearing in this case was held on 18 December 2001 in Chennai. At the joint hearing, the following submissions were made:

**M/s. Sea-port Logistics Pvt. Ltd. (SEAPOL)**

(i) We have been pursuing with CHPT; We did not, therefore, come to TAMP earlier. This matter was alive within CHPT even last month.

(ii) 7 vessels were involved. The CHPT ordered refund in respect of 2 vessels. We wish to claim for the other 5 vessels also.

(iii) We do not know whether the TAMP can look into this case of 1996 or not. We do not want to go to court. We will be happy if the TAMP can decide.

(iv) ‘Dedicated berth’ is not enough. ‘Exclusive facility’ must also be there. In the berth concerned, there was no exclusive facility.

**Shipping Corporation of India (SCI)**

(i) Reaction of the CHPT to representations is too slow. It takes years for the users to sort out first with the port. Hence, the delay has occurred in this case.

**Chennai Port Trust (CHPT)**
These vessels were berthed on berths earmarked generally for handling cargo of TNEB. Charges for priority berthing were inevitable.

The berths in question have no ‘exclusive facilities’. They are not dedicated berths; other vessels can be berthed there without any priority charge.

Container Shipping Lines Association (CSLA)

See the correspondence exchanged between the SEAPOL and the CHPT. The CHPT has been tardy in response. They were abrupt also. The TAMP must come in to do justice.

If the vessels came in the normal course, only normal charges shall be levied.

There is no transparency in this case.

5.1. After the joint hearing, the SEAPOL has sent two letters forwarding copies of certain documents like guidelines / circulars relating to priority berthing issued by the CHPT, berthing sheets, and copies of some of the correspondence exchanged with the CHPT.

The SEAPOL has further pointed out that only at berth JD-2, an exclusive facility (i.e., working of mechanical hopper with conveyer system) is provided; and, its vessels were berthed on 4th & 5th priority on normal arrival turn.

5.2. Copies of the above communications received from the SEAPOL were forwarded to the CHPT for comments. Again, no response from the CHPT has been received.

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

(i). This case is about levy of priority berthing charges on some of the vessels belonging to the SEAPOL on their specific calls at the CHPT on 5 occasions. It is noteworthy that the disputed levy was made by the CHPT in the year 1996, i.e. before constitution of this Authority.

(ii). All the major port trusts have a system of priority / ousting priority berthing for additional charges. This arrangement is in vogue with reference to a Government instruction on this subject. While disposing of proposals for general revision of tariffs at many of the major port trusts, this Authority has observed that in the context of limited availability of berthing facilities at present, there would always be any number of vessels ready to pay additional charges; and, this would give scope for exploitation of (discretionary) powers. Since a final view on this issue has not yet been taken by this Authority, it was decided neither to approve nor to disapprove the priority berthing arrangement. The major port trusts have been allowed to continue to levy the charge as hitherto until this Authority takes a final view for common adoption by all the ports.

(iii). The representation of the SEAPOL mentions about wrong levy of the priority berthing charges in respect of its 7 vessels carrying thermal coal for TNEB berthed during the period 31 January 1996 – 28 July 1996. The Petitioner has admitted that the CHPT has conceded its demand for refund of this charge in respect of two of its vessels. The argument of the SEAPOL is that the remaining 5 vessels were berthed in the normal course of their arrival and were, therefore, not subject to payment of priority charges. The CHPT, regrettably, has not furnished any comments in this case except making
Some general statements at the joint hearing. Nevertheless, it appears from the documents furnished by the SEAPOL that the CHPT had turned down its claim for refund of priority berthing charges levied on the 5 vessels in reference on the ground that these vessels were in fact accorded priority in berthing.

Even though issues of ‘dedicated berth’ and ‘exclusive facility’ have been agitated, they do not appear very relevant to this case; the real issue to decide on admissibility of the priority berthing charge is whether priority has actually been accorded in berthing or not. It is noteworthy that the internal guidelines issued by the CHPT in this regard itself admits that priority berthing charges will not be levied on vessels berthed in normal course of their turn.

(iv). In order to decide whether these 5 vessels were accorded priority on arrival, a detailed scrutiny of berthing schedules and vessel waiting position related to the relevant point of time is essential. It is to be recognised that allotment of berths to vessels is an operational matter to be handled by the port trust. This Authority, therefore, is not inclined to scrutinise such berthing details. In any case, this Authority does not have the wherewithal to undertake such scrutiny particularly in the context of lack of response from the port trust.

(v). This Authority does not ordinarily give retrospective effect to its orders. But, in cases governed by special circumstances, it does require retrospective application of its orders. It is noteworthy that the (then) Ministry of Surface Transport in consultation with the Ministry of Law has advised that this Authority can pass orders with retrospective operation. As has already been pointed out, this case relates to a period prior to the constitution of this Authority. Nevertheless, there cannot be any objection to this Authority to inquire into any tariff arrangement prevalent before its constitution. If this is not so, then this Authority cannot alter any tariffs since they have all been notified before its constitution. Surely, the Statute would not have been amended to constitute this Authority only for the purpose of witnessing a static tariff situation! Notwithstanding this position, this Authority generally admits any representation, for effecting changes in a Scale of Rates notified prior to April 1997 only for removal of inconsistencies / irrationalities.

In the present case, the issue is confined only to the 5 vessels in reference. Neither the Petitioner nor the other user organisations who have been consulted in this case have pointed out that the issue with reference to 5 vessels still lingers on affecting other vessels even now. That being so, there does not appear to be any need to alter the Scale of Rates of the CHPT.

Since the issues agitated are relevant only in respect of the 5 vessels in reference, this Authority finds that it will suffice to remit the case to the CHPT for the limited purpose of examination of the issues agitated with reference to the berthing schedule of the relevant period.

7. In the result, and for the reasons given above, and based on a collective application of mind, this Authority rejects the application of the SEAPOL as it does not require setting of any tariff policy / guideline or does not conclusively prove any wrong application of the Scale of Rates by the CHPT. This Authority however, remits the case to the CHPT with an advice to re-examine this case under advice to the Petitioner.

(S. Sathyam)

Chairman