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 request of the Jawaharlal Nehru Port Trust for exemption from implementing the Orders relating to levy of penal interest for the period 23 March 2000 to 30 September 2001 as in the Order appended hereto.

(S. Sathyam)
Chairman

ORDER

(Passed on this 8th day of April 2002)

This case relates to a proposal from the Jawaharlal Nehru Port Trust (JNPT) for grant of exemption from implementation of this Authority’s Orders relating to levy of penal interest for the period 23 March 2000 to 30 September 2001.

2. Emphasizing the principle of level playing ground, this Authority had passed an Order on 4 February 2000 prescribing payment of penal interest on delayed payments both ways i.e. by Port users as well as by the Port Trusts. Retaining the underlining principle envisaged, this Order was subsequently amended on a few occasions to modify the rate of penal interest and grace period in consideration of the requests made by some of the Major Port Trusts. The last such amendment was made on 5 November 2001 by considering the proposal made by the Indian Ports Association.

3. In this backdrop, the JNPT has forwarded the proposal in reference wherein it has brought out the following points:-

(i). The Port has not been able to implement the orders of the Authority from 23 March 2000 to 30 September 2001.

(ii). On receipt of the initial Order of the Authority, the JNPT has expressed its difficulties in implementing the order. The
Authority has, however, advised all the Major Ports to take up this matter with the Indian Port Association to formulate a coordinated view about adoption of a uniform interest rate as also the time limit beyond which the penalty will apply.

(iii) The intention behind the Order of the Authority was to provide a level playing ground. Till 30 September 2001, the JNPT neither levied nor paid any penal interest.

(iv) If it is decided to implement the Orders of the Authority retrospectively, it will become difficult to identify the cases where delays occurred and to recover the dues from users. The entire matter will lead to confusion and protests from port users. In the event, retrospective billing will cause hardships and difficulties.

4. The JNPT has also informed that the position mentioned above was considered by its Board of Trustees in its meeting held on 22 February 2002 and it was decided to approach the Authority with the request to exempt the JNPT from the implementation of the Orders for levy of penal interest from 23 March 2000 till 30 September 2001.

5.1 The Order in reference was passed by this Authority exercising its statutory powers. It has the effect of modifying the Scale of Rates of the Major Port Trusts; and, the Major Port Trusts are legally bound to follow the rates and conditionalities prescribed in their Scales of Rates. It is noteworthy that this Authority’s Order in reference has not been set aside by any higher judicial forum. The difficulties earlier expressed by the JNPT in implementation of the Order were adequately dealt with and suitable advice was given to the JNPT. That being so, the approach earlier adopted by the JNPT about not implementing this Authority’s Order cannot be said to be in conformity with the tariff setting arrangements envisaged in the Major Port Trust Act.

5.2 Notwithstanding the position discussed above, it is noteworthy that the JNPT has already implemented the Order from 1 October 2001. The problems now expressed by the JNPT in implementation of the order retrospectively appear to be genuine and worthy of admission.

5.3 As has already been clarified in various related Orders, the intention behind the prescription of penal interest is to allow a level playing ground and to provide for uniformity in the matter of payment of interest on delayed payments by the Port users as well as delayed refunds made by the Port Trust. In other words, if the Port applies the penal interest provision for delayed payments from users, the same condition shall be
applicable to delayed refunds made by it. In the case in hand, the JNPT has clarified that penal interest provisions have not been enforced either way till 30 September 2001.

5.4 Bearing in mind the fact that the governing principle of ‘level playing ground’ has not been violated, and recognising the legal and accounting difficulties in enforcing the prescription retrospectively, this Authority is inclined to accede to the request now made by the JNPT.

6. In the result, and for the reasons given above, and based on a collective application of mind, this Authority grants exemption to the JNPT from implementation of the Orders relating to levy of penal interest for the period 23 March 2000 to 30 September 2001.

( S. Sathyam )
Chairman

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