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Tariff Authority for Major Ports

NOTIFICATION

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal of the Chennai Port Trust for amendment of its Scale of Rates to allow rebate of crane hire charges for car carrier and RORO vessels as in the Order appended hereto.

(S. Sathyam)
Chairman

The Chennai Port Trust (CHPT) - - - Applicant

ORDER

(Passed on this 11th day of March 2002)

This case relates to a proposal received from the Chennai Port Trust (CHPT) for amendment of its Scale of Rates (SOR) to allow rebate of crane hire charges for car carrier/RORO vessels.

2.1. The CHPT has made the following points in its proposal:

(i). The existing SOR of the CHPT contains a provision at Note-1B(ii) of Chapter XI relating to berth hire charges that if general cargo vessels falling under group V to VII of Schedule-I are berthed at Inner Harbour or Jawahar Dock, a sum of Rs. 1837.50 (US $ 87.465) per 8 hours unit shall be added with the berth hire charges towards wharf crane hire.

(ii). M/s. Parekh Marine Agencies Pvt. Ltd. (PMAPL) have requested for a lump sum rebate of US$ 249.90 per day on account of crane hire charges leviable from RORO vessels in line with a similar rebate allowed in the cases of ONGC / LASH / Naval / Research / Passenger / Foreign Tourist vessels and Fishing Trawlers falling under group I to IV of Schedule-I (under Note- 1 F of Chapter XI) which do not use wharf cranes.

(iii). The vehicles are driven for the purpose of loading/unloading into/from RORO vessels; and, therefore, the question of this category of vessels using the wharf crane does not arise.

(iv). In view of the representation of the PMAPL, it is proposed to amend the SOR by adding the following provision after Note 1B(ii) of Chapter XI relating to berth hire charges:

“Berth hire charges of Rs.1837.50 (US $ 87.465) per 8 hour unit towards wharf crane hire shall not be added for car carrier / RORO vessels in the
Since the car carrier/RORO vessels having GRT less than 30,000 visits the CHPT in lesser number in a year, it is considered to allow lump sum rebate to these vessels as applicable to the list of vessels under group I to IV of Schedule-I of Chapter XI.

It is also proposed to allow lump sum rebate to vessels only when the vessels do not use any crane including ship derrick or any crane installed in the vessel during her stay in the berth’ instead of earlier admissibility of rebate when wharf cranes are not used. It is, therefore proposed to amend the provision under Note-1(F) of Chapter XI as follows:

“A lump sum rebate of Rs.1837.50 (87.465 US Dollars) per 8 hour unit shall be allowed on the charges mentioned in the above Schedule-I in respect of ONGC Vessels, Lash Vessels, Naval Vessels, Research Vessels, Fishing Trawlers, Passenger Vessels ‘Foreign’ Tourist Vessels and RORO Vessels / Car Carrier Vessels in the Groups I to IV of Schedule-I which do not use any crane including ships derrick or any crane installed in the vessel during her stay in the berth.”

2.2. In this backdrop, the CHPT has requested this Authority to approve the proposed amendments in its SOR.

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

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

(i). It is a welcome amendment. The cranage shall not be charged on a vessel if the wharf cranes are not used. The criteria for levy of crane hire charges must be whether the service has been rendered or not, rather than the class of a ship. The charges can be levied on a pro-rata basis of 8 hours for all vessels alongside the berth.

(ii). It is not proper to state that rebate is allowed if the vessels do not use any crane including ship derrick or any crane installed in the vessel during the stay at the berth. The cranage charges shall be delinked from the berth hire as it becomes difficult to collect these charges from the importers / agents / stevedores for the cargo carried on FIO basis. The cranage charges can be directly collected from the consignees.

**Madras Chamber of Commerce and Industry (MCCI)**

(i). The Chamber supports the proposal of the CHPT. Since the vessels load and discharge cargo by driving the vehicles up the ramp, the question of using port trust cranes does not arise. It is, therefore, logical not to levy any crane hire charges.

(ii). Many of these vessels are fitted with provision cranes, which are used for lifting provisions and ship spares; but, are not capable of being used for any cargo operations. The proposed draft amendment shall, therefore, be modified by addition of the following words at the end of the proposed amendment, which will eliminate any possibility of use of such provision cranes being interpreted as aiding the cargo operations and thereby avoiding levying of crane hire charges:

“…..for crane including ships’ derrick or any crane installed in the vessel for cargo operations during her stay in the berth.”
M/s. Parekh Marine Agencies Pvt. Ltd. (PMAPL)

(i). The loading/unloading from/onto vessels is done by driving of the assembled vehicles; and hence, the car carrier vessels do not require any port equipment like wharf cranes for loading/unloading operation.

(ii). Since the existing SOR does not contain any provision for rebate for the car carrier/RORO vessels under Note-1F of Chapter XI, (which was introduced before the commencement of car carrier vessels from the CHPT) additional charges are levied by the CHPT towards usage of wharf cranes including the priority berth hire charges as prescribed under Note 1B (ii) of Chapter XI.

(iii). It is, therefore, requested to include car carrier / RORO vessels in the SOR of the CHPT with suitable amendments as suggested by the CHPT; and, the amendments be made effective from January 2000.

Shipping Corporation of India (SCI)

(i). The proposal of the CHPT is a welcome step; and, may be considered favourably.

Society of Indian Automobile Manufacturers (SIAM)

(i). Wherever the wharf cranes or ship’s derrick or any crane installed in the vessel are not used as in the case of car carrier/RORO vessels, levy of crane hire charges is meaningless; therefore, the proposal of the CHPT is justified and acceptable.

Tamil Chamber of Commerce (TCC)

The Chamber fully endorses the proposal of the CHPT; and the same can be accepted subject to the approval of the Authority.

Southern India Chamber of Commerce and Industry (SICCI)

(i). Levy of crane hire charges in respect of car carrier/RORO vessels is unjustified, as the cranes are not utilised at all.

3.2. A copy each of the comments received was sent to the CHPT as feedback information.

4.1. On a preliminary examination of the proposal it was found that lump sum rebate, which was earlier allowed to vessels (under Note 1F of Chapter XI) when the ‘wharf cranes are not used’ clause was replaced and substituted by ‘any crane including ships derrick or any crane installed in the vessels during her stay at the berth’. The CHPT was requested to explain the rationale behind inadmissibility of rebate when ships use their own derrick/crane.

4.2. In addition to reiterating the points made by it earlier, the CHPT has explained that rebate of Rs.1837.50 allowed on wharf crane is inadmissible when ships use their own derricks or cranes from other agencies since the port has incurred capital expenditure to provide facilities to the users which should be availed of by the vessels as and when required. If the vessel uses it from some other source, the infrastructure facility created by the Port remains idle; and, hence it has proposed not to allow rebate of crane hire charges to the vessels, when ships use their own derricks or crane from other agencies.

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

Chennai Port Trust (CHPT)
(i). Our formulation plus MCCI suggestion about adding “for crane including ships’ derrick or any crane installed in the vessel for cargo operations during her stay in the berth” should be O.K.

(ii). We also agree that levy of wharfage on ad-valorem shall be charged to unit rate. We will rationalise at the next general revision.

**Parekh Marine Agencies Private Limited (PMAPL)**

(i). Please give retrospective effect to the proposed amendments. We have been paying more.

6.1. After the joint hearing the PMAPL has requested this Authority to give a retrospective approval to the proposal of the CHPT from 1 January 2000 onwards.

6.2. The PMAPL has made the following points in support of its request:

(i). The CHPT could have proposed the inclusion of car carrier/RORO vessels at the time of entry of these vessels in the International Shipping Industry in early 1990s by way of an amendment to the rule applicable to vessels of group I to IV of Schedule-I.

(ii). It had represented the CHPT for refund of amount charged towards the wharf crane hire within six months from the date of receipt of the bill; however, the CHPT had taken time to submit the proposal to the Authority.

(iii). Giving retrospective effect to the proposal does not involve any loss of revenue to the port trust; but, shall do justice to the owners of the vessel from whom the additional amount should not have been collected in the first instance. If given a prospective approval, the owners of the vessel will be put to loss to the extent they had paid the money to the CHPT not really due from them.

7. With reference to the totality of information collected during the processing of this case, and bearing in mind the arguments advanced at the joint hearing, the following position emerges:

(i). The CHPT levies composite berth hire charges which include charges for wharf cranes. The system of including charges for wharf cranes in berth hire charges has come into being based on a recommendation made by the Directing Group on rationalisation of Port tariffs. The existing Scale of Rates of the CHPT for berth hire charges includes the charges for wharf cranes in the case of vessels falling under group I to IV (i.e., upto 30,000 GRT) and provides for levy of wharf crane charges at the prescribed rate in addition to berth hire charges in the case of vessels falling under group V to VII (i.e., above 30,000 GRT).

(ii). The CHPT has now proposed to allow rebate to the tune of the prescribed cranage charges in the case of car carriers/RORO vessels which fall under group I to IV and not to levy wharf crane charges on the same category of vessels which fall under group V to VII. By design, the car carriers/RORO vessels do not require use of wharf cranes for their cargo operations. In realisation of this position, the CHPT has come up with the instant proposal to exempt payment of wharf crane charges by car carriers/RORO vessels. This proposal has been generally accepted by the concerned users/user-organisations.

(iii). The Chennai Steamer Agents’ Association has suggested that the cranage charges shall be de-linked from the berth hire charges in view of the difficulties faced by the Shipping Lines/agents to collect this component of charge from the importers/stevedores in the case of cargo carried on FIO basis. As has already been
mentioned, the berth hire charges prescribed not only in the CHPT but in other Major Ports also are composite in nature. This arrangement has been adopted since 1984 based on the recommendations of the Directing Group to simplify and rationalise Port tariff structure. This Authority has already advised all Major Ports to review the existing composite berth hire charges with reference to the facilities provided at individual/group of berths. When this exercise is completed, the composite berth hire charges applicable for different berths will be commensurate with the facilities provided. In any case, it appears that it may not be necessary to veer away from the established practice of including charges for provision of wharf cranes in the berth hire charges. Berth hire being a vessel related charge will continue to be levied from the vessel. It may be relevant here to mention that this position has already been settled in the case relating to composite berth hire charges levied by the Mumbai Port Trust which was taken up for adjudication by this Authority based on a representation filed by the Mumbai and Nhava Sheva Ship Agents Association.

(iv). The CHPT has proposed that the rebate in/exemption of charges for wharf cranes, as the case may be, is applicable only if the vessels do not use any cranes for cargo operation. This stipulation is understandable as the Port wants to protect its investments made to provide wharf cranes; and, does not want idling of these facility. This stipulation may not be applicable in the case of car carriers / RORO vessels as these vessels do not require the services of a wharf crane. Nevertheless, since the proposed clause in the SOR for allowing rebate of crane hire charges will apply not only to car carriers / RORO vessels but also to other categories of vessels which may require wharf cranes for loading / unloading, the stipulation needs to be included in the Scale of Rates.

Insofar as allowing rebate for crane hire is concerned, it is reasonable to allow such rebates if the vessels use other cranes when the CHPT wharf cranes are requisitioned by them but are not made available by the Port for reasons like repair, maintenance, etc. That being so, the proposed conditionality is to be elaborated to include such eventualities. It is noteworthy that a similar condition has been stipulated by this Authority for cases of exemption from heavy lift charges and intercarting of iron-ore after unloading at Royapuram Railway yard.

(v). The MCCI has suggested elaboration of the proposed draft amendment to specifically mention about use of wharf cranes for cargo operations so that the cases of use of cranes for lifting ships provision/spares can be excluded from the proposed exclusion clause. The suggestion has been made to eliminate any ambiguity in applying the Scale of Rates for allowing refund of wharf crane hire charges. The draft amendment proposed by the CHPT for approval is, therefore, corrected to include the suggestion made by the MCCI.

(vi). M/s. Parekh Marine Agencies Private Limited (PMAPL) have requested for a retrospective approval of the proposed amendment arguing that the car carriers/RORO vessels have started calling at the CHPT since January 2000; and, they have not used the wharf cranes. It is to be recognised that the Orders of this Authority ordinarily take effect only prospectively. In exceptional circumstances, this Authority considers giving retrospective effect to its Orders. Delay in submission of a proposal by the CHPT or a long pending representation made by the PMAPL cannot be an exceptional circumstance warranting retrospective revision of the CHPT Scale of Rates. If these grounds are accepted to allow retrospective amendment of Scale of Rates, there can be a demand for similar relief in almost all cases where the SOR is to be amended to provide rebates/concessions or to include new provisions aiming at providing relief to Port users.

This Authority has already decided to prescribe a lead period of 30 days for vessels-related charges and 15 days for cargo-related charges for implementation of the revised/amended prescription. Even though the request of the PMAPL is not considered for retrospective revision of the CHPT Scale of Rates, this Authority finds
it reasonable to waive the 30 day lead period for implementation of the proposed amendment in the instant case and order amendment of the CHPT Scale of Rates with immediate effect from the date of notification of this Order in the Gazette of India.

8.1. In the result and for the reasons given above, and based on a collective application of mind, this Authority approves the following amendments to the Scale of Rates of the CHPT:

(i). The following provision is added after the existing Note 1.(A).(ii) in Chapter XI of Book-I:

"(iii). Crane hire charges of Rs.1837.50 (US$ 87.465) per 8 hour unit shall not be added in the Bert hire charges for car carriers / RORO vessels falling under Groups V to VII of Schedule I berthed at the Inner Harbour or Jawahar Docks, if the vessels do not use the wharf cranes for cargo operations"

(ii). The following provision is substituted in place of Note 1.(F). in Chapter XI of Book I:

"(F). A lump sum rebate of Rs.1837.50 (US Dollars 87.465) per 8 hour unit shall be allowed on the charges mentioned in the Schedule I in respect of ONGC vessels, Lash vessels, Naval vessels, Research vessels, Fishing trawlers, Passenger vessels, Foreign tourist vessels and RORO vessels/Car carrier vessels falling under Groups I to IV of Schedule I which do not use any crane including ships derrick or any crane installed in the vessel for cargo operations during her stay in the berth. The rebate will, however, be allowed if these vessels use their own cranes or hire private cranes when the wharf crane(s) required cannot be spared by the Port for reasons like maintenance, overhaul and repairs or non-availability because of being hired by another party."

8.2. This Order will come into effect from the date of its notification in the Gazette of India.

( S. Sathyam )

Chairman

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