NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal of the Mumbai Port Trust for approval of formula for adjustment of rate for handling/removal of containers from shipside to container yard and vice-versa as in the Order appended hereto.

( A.L. Bongirwar )
Chairman
This case relates to a proposal from the Mumbai Port Trust (MBPT) for approval of a formula for automatic adjustment in the rates for handling/removing of containers from shipside to container yard or vice versa with reference to fluctuations in fuel price level.

2.1 The submissions made by MBPT are summarized below:

(i). Rates for handling/removal of container from shipside to container yard or vice versa were initially approved by TAMP on ad-hoc basis vide order dated 4 May 2004. These rates were approved on regular basis by an order dated 10 August 2004. The approved rates are as follows:

<table>
<thead>
<tr>
<th>Container Type</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>20’ Empty Container</td>
<td>Rs. 460/-</td>
</tr>
<tr>
<td>20’ Loaded Container</td>
<td>Rs. 565/-</td>
</tr>
<tr>
<td>40’ Empty Container</td>
<td>Rs. 690/-</td>
</tr>
<tr>
<td>40’ Loaded Container</td>
<td>Rs. 847.50</td>
</tr>
</tbody>
</table>

(ii). The rates prescribed and approved were not cost based but emerged from a tender process.

(iii). The MBPT is recovering transportation charges of containers from the users at the rates quoted by the contractors and overheads are not recovered.

(iv). As per the tender condition no. 5.16, rates quoted by contractors are subject to variation on account of escalation or de-escalation in the fuel price. No increase or decrease in the contract rate shall be available on account of increase or decrease up to 10% in the fuel prices. Escalation in fuel price is a regular phenomenon. With a view to avoid frequent references to TAMP the following formula may be approved which will make adjustment in contract rate on account of variation of POL prices.

\[
V = \frac{(P - Po) \times R \times Q}{Po}
\]

Where

(a). \( V \) - Amount of adjustment on account of POL for value \( R \) of work done during the month under consideration,

(b). \( Po \) - Price of HSD in Mumbai at the time of opening of the tender,

(c). \( P \) - Price of HSD for the month under consideration,

(d). \( Q \) - Factor 0.25 representing the component of POL in the contract rates.

(e). \( R \) - Value of work executed during the month under consideration.
(v). The fuel prices prevailing on the date of opening of tenders, i.e. on 4 February 2004 were Rs. 2600.09 / Kilolitre. HPCL vide its letter dated 2 February 2005 has stated that the price has increased to Rs. 28839.94 / Kilolitre on 19 August 2004 and further increased to Rs. 31376.37 / Kilolitre on 5 November 2004.

(vi). Since the fuel price have increased the contractor has requested for enhancement of rate. The MBPT requested TAMP to approve the enhanced rate.

2.2. Subsequently, the MBPT revised the proposed rates citing typographical error and communicated the following revised rates for approval:

<table>
<thead>
<tr>
<th>Container size</th>
<th>New rates w.e.f.</th>
<th>New rate w.e.f.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1.8.2004</td>
<td>5.11.2004</td>
</tr>
<tr>
<td></td>
<td>(Rs.)</td>
<td>(Rs.)</td>
</tr>
<tr>
<td>20' Empty container</td>
<td>473</td>
<td>484</td>
</tr>
<tr>
<td>20' Loaded container</td>
<td>580</td>
<td>594</td>
</tr>
<tr>
<td>40' Empty container</td>
<td>709</td>
<td>726</td>
</tr>
<tr>
<td>40' Loaded container</td>
<td>871</td>
<td>891</td>
</tr>
</tbody>
</table>

3.1. In accordance with the consultative procedure prescribed a copy of the MBPT proposal was forwarded to the concerned users / representative bodies of port users for their comments.

3.2. The comments received from the users were forwarded to MBPT as feedback information.

4. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received will be sent separately to the relevant parties. These details are also available at our website http://tariffauthority.gov.in

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

(i). This Authority while passing an Order in September 2003 on the MBPT proposal for fixation of rates for providing stevedoring services taken over by it, advised the port to submit its proposal for a comprehensive service to container and levy of box rates. As a step towards providing composite service to containers, the port took over the transportation of containers from shipside to container yard or vice versa and filed a proposal for fixation of rates towards levy of charges for handling / removal of containers from shipside to container yard or vice versa. The proposed rates were initially approved on ad-hoc basis considering the urgency expressed by the Port. Subsequently, the MBPT proposal was processed following the usual consultation process and this Authority passed an Order dated 10 August 2004 regularising the earlier approved rates for transportation of containers from shipside to container yard or vice versa with effect from 15 May 2004, the date of taking over of the transportation of containers from shipside to container yard or vice versa by MBPT.

In this context, it may be relevant here to mention that the port has recently filed a proposal for prescribing composite box rates for the services provided to containers. This proposal is being processed separately following the usual consultation process adopted.

(ii). The service of transportation of containers from shipside to container yard or vice versa is reportedly provided by the port through its contractors for which the MBPT collects the transportation charges of containers from the users at the approved rates. As correctly pointed out by the MBPT, the rates prescribed by this Authority are not cost based rates but are the rates quoted by the
successful bidder in the tendering process adopted by the MBPT in this connection. It may be significant here to note that in the middle of the relevant proceedings the MBPT demanded that some cushion over and above the contract rate should be allowed to meet administrative expenses. This plea was disallowed by this Authority.

According to the MBPT, the transportation contract executed by it contains a provision for adjustment of contract value with reference to the change in market price of fuel. This fact was not mentioned by MBPT in its initial proposal. In effect, the proposal in hand is to rectify the omission made in the earlier proposal.

Setting port tariff follows a forward looking model in the present cost plus regime of regulation. Generally, cost estimates considered for tariff fixation capture anticipated escalation in various input costs. Insofar as the tariff item in reference, as mentioned earlier, the usual cost plus approach was not followed but the contract rates were allowed to be levied from users. Having admitted that only contract price will be levied for transportation of containers and recognizing the subsequent disclosure made by the MBPT about the relevant rates are subject to definite escalation in the manner provided in the contract, it will be logical to allow the request of MBPT.

(iii). The IMC and BCHAA have pointed out about non implementation of this Authority's Order relating to fixation of ceiling rates for identified services provided as per Section 42 of the MPT Act. It appears that the MBPT has issued necessary notice to implement the Order but shipping lines have taken up the matter in litigation. It is understood that the Hon'ble Court has heard the arguments and the matter is adjourned till June 2005.

With reference to the objection raised by IMC and BCHAA about origin/destination of various movements of containers, it should be noted that the issue may be relevant for basic rate fixation which is not under consideration now. As correctly pointed out by MBPT, the instant proposal is with reference to transportation of container between shipside and container yard. The proposed introduction of box rates by MBPT may take care the objections raised by the users. Proceedings have already been initiated for fixing box rates and these two users associations are also consulted in that case. If they desire, they may raise this issue in the concerned proceedings.

(iv). The MBPT in its proposal has proposed to revise upward the existing rates taking into consideration the increase in fuel price in August 2004 and November 2004 and sought approval for such two sets of rates, one set of rates to be effective from August 2004 and another set of rates to be effective from November 2004. The MBPT proposal also includes a formula for approval of this Authority to take care of future increase in fuel prices to avoid frequent reference to this Authority.

As stated earlier, an approved set of base rates is already available with the MBPT which is in force from 15 May 2004. The formula approved by this Authority can be applied on the base rate to take care of the reported hike in fuel prices in August 2004 and November 2004. It is noteworthy that the MBPT itself has proposed such an arrangement to accommodate increase in fuel prices, if any, after November 2004. It is not necessary for this Authority to prescribe different set of rates to be applied at different point of time. It would be suffice if the escalation formula suggested by MBPT based on the tender condition is approved with retrospective effect from 15 May 2004.
6. In the result, and for the reasons given above, this Authority approves insertion of the following Clause 3.1 below Clause 3 of Sub Section (C) of Section – V of Dock Scale of Rates of MBPT:

Section - V

“3.1. The rates prescribed in Clause 3 above are subject to adjustment on account of increase or decrease in fuel prices applying the following formula:

\[ V = \frac{(P - Po) \times R \times Q}{Po} \]

Where

(a). \( V \) - Adjustment in the base rate,
(b). \( Po \) - Price of HSD in Mumbai at the time of opening of the tender i.e., Rs. 26009.09 per Kilolitre,
(c). \( P \) - Price of HSD for the month under consideration,
(d). \( Q \) - Factor 0.25 representing the component of POL in the base rates,
(e). \( R \) - Base rate approved by TAMP as given in Clause 3 above.

3.2. The MBPT is authorised to adjust the basic rates by applying the formula given above. Adjustment shall be made only when the fluctuation in the fuel price is more than 10% of the fuel price considered in the immediately preceding rate adjustment.”

7. The above amendment to the Scale of Rates is approved with retrospective effect from 15 May 2004.

( A.L. Bongirwar )
Chairman
SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS / DIFFERENT USER ORGANISATIONS AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY

F. No. TAMP/14/2005-MBPT - Proposal from Mumbai Port Trust for approval of formula for arriving at contract rate and new rates for handling/removal of containers from shipside to container yard and vice-versa.

1. The comments received from the port users / representative bodies of port users are summarised below:

Indian Merchant Chambers (IMC)

(i). The order of TAMP dated 26 June 2001 stipulates reduction in terminal handling charges at the MBPT. The said order is not implemented.

(ii). The Board of Trustees of the MBPT vide Resolution No.38 prescribed the charges for handling / removal of containers from shipside to container yard and vice versa. We presume that the said tariff prescribed by the Board of Trustees is in relevance to container being physically moved from Indira Docks to the CFS’s lying in the outline area.

(iii). If the clarification received from the MBPT authorities that the tariff is for movement of cargo from the Indira Docks to outline CFS’s area i.e. Sewree Timber Pond, then there should be a cost difference for movement of containers from point to point i.e.

(a) Container moved from Indira Docks to Frere Basin

(b) Container moved from Indira Docks to Manganese ore Depot (MOD)

(c) Container moved from Indira Docks to Sewree Timber Pond (STP)

(d) Container moved from Indira Docks to any other CFS’s outside port.

(iv). The MBPT must be requested to forward its Tariff for each locations instead of the proposals submitted before the Authority. The proposal put forward by the MBPT lacks clarity and transparency.
The Bombay Custom House Agents' Association (BCHAA)

(i). The MBPT may furnish the location of the container yard from the port terminal to determine the cost escalation to enable us to respond.

(ii). TAMP Order No: TAMP/47/2000-MBPT dated 26 June 2001 is still not implemented. It is important to implement TAMP’s Orders in toto.

(iii). Port Authorities should invite the port users for consultation prior to sending any proposal to TAMP which will enable the port users to understand and give a positive approach to such request for escalation in tariff.

2. Comments of the MBPT on the comments of the IMC:

(i). There appears to be some misunderstanding in IMC on the issue.

(ii). The IMC has referred to the transportation of container between Container Yard and Container Freight Station whereas the work under reference pertains to transportation of container between shipside and Container Yard.