

# TARIFF AUTHORITY FOR MAJOR PORTS

G. No. 316

New Delhi, 28 November 2001

## 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 disposes of the proposal of the Mumbai Port Trust for revision of Port Dues on all vessels except Coastal Vessels as in the Order appended hereto.

( **S. Sathyam** )  
Chairman

**Tariff Authority for Major Ports**  
**Case No.TAMP/47/2001-MBPT**

**The Mumbai Port Trust (MBPT)**

**Applicant**

**ORDER**

(Passed on this 5th day of November 2001)

This case relates to a proposal received from the Mumbai Port Trust (MBPT) for revision of Port Dues on all vessels except coastal vessels.

2.1. In its proposal, the MBPT has made the following points:

- (i). Port Dues on all vessels were revised with effect from 20 May 1991. In pursuance of Government directions, the Port Dues were denominated in dollar terms with effect from 2 June 1992. Subsequently, the unit of charging Port Dues was changed from 'NRT' to 'GRT' basis from 23 January 1994. Port Dues on vessels have not been revised since 1994.
- (ii). The Government has directed all the major ports to review the port charges once in three years. Revision of Port Dues is already overdue. The Port has also incurred considerable expenditure on dredging of the main channel to facilitate deep drafted vessels.
- (iii). A comparison of the existing Port Dues levied at the MBPT with those of the JNPT indicates that rates at the JNPT are much higher though its channel length is shorter. Further, Port Dues are leviable at the JNPT on every visit as against the levy of this charge once a month at the MBPT.
- (iv). In the meeting of the Board of Trustees it was clarified that though this service per se was not in deficit, the proposed revision in rates would be necessary considering the overall financial situation (of the Port) and increasing costs on dredging and maintenance (of channel).

2.2. The MBPT has proposed the following revisions/amendments to the Schedule of Port Dues in the MBPT Scale of Rates:-

- (i). The Port Dues have been proposed to be revised in respect of foreign-going vessels as given below:

	Vessel chargeable	Rate of Port Dues per GRT (in US cents)	
		Existing	Proposed
1.	Foreign going vessels of 3000 tons and upwards (except fishing boats)	17	20
2.	Foreign going vessels of 10 Tons and upwards but less than 3000 tons (except fishing boats)	12	14
3.	Tugs, boats ferry boats and river boats, whether propelled by steam or other mechanical means arriving from ports outside India	12	14

- (ii). It has not proposed any revision of Port Dues on coastal vessels on the ground that any increase in the tariffs on coastal vessels will adversely affect the attempts of the port to attract coastal cargo to the Mumbai Port.
- (iii). A note at Sl.No.(4) of explanations in the Schedule of Port Dues was incorporated in 1997 prescribing levy of full Port Dues as per the Schedule in respect of vessels plying between the MBPT and the JNPT for carriage of cargo. This was applicable for vessels plying only between the MBPT and the JNPT and not in respect of vessels engaged in foreign trade or coastal trade and calling from other ports. This explanation was not accepted by the Audit as it resulted in vessels paying additional charges to the MBPT. To obviate such difficulties to the trade, the MBPT has proposed to amend this provision as given below:

“The vessels visiting the JNPT, if for any reason same vessels visit the MBPT, half of the Port dues recoverable as per the above schedule shall be levied. Vessels plying exclusively between the MBPT and the JNPT for carriage of cargo and not sailing out of Mumbai Harbour Limits, however, shall be levied full Port dues as per the above schedule.”
- (iv). The MBPT has also proposed to incorporate the provision about re-conversion of dollar denominated tariffs at the time of billing based on a common adoption Order in this regard passed by the Authority.
- (v). All other existing provisions in the Schedule of Port Dues are proposed to be retained.

3.1. The proposal of the MBPT was circulated among various port users/representative bodies of port users and the JNPT for their comments. The comments received from them are summarised below:

#### **The Jawaharlal Nehru Port Trust (JNPT)**

- (i). In pursuance of an agreement signed in August 1989 between the MBPT and the JNPT, the JNPT is recovering half of the MBPT Port Dues from vessels calling at the JNPT and remitting the same to the MBPT.
- (ii). It has no objection to the MBPT proposal for increasing its Port dues. The JNPT has, however, taken up with the MBPT the issue of charging 50% of the MBPT Port dues at the JNPT. It has requested the MBPT to review the matter as twelve years have passed since the signing of the agreement.
- (iii). The MBPT has stated that though this service is not in deficit, the revision in Port Due is proposed considering the overall financial situation and increasing costs on dredging and maintenance. The Authority may examine this in the context of its stated policy of not allowing cross-subsidisation.

#### **The Container Shipping Lines Association (CSLA)**

- (i). Taking into consideration an average depreciation in Indian Rupee of 6% per annum, the Port Dues have gone up by nearly 36% in the last six years (i.e. since the last revision). With the introduction of 5% service tax, the effective increase in rates proposed by the MBPT will be approximately 19%.
- (ii). The Port has confirmed that this service per se is not in deficit. The attempt to improve the overall financial situation by cross-subsidising the other services

from the surplus arising from revision proposed in Port Dues is contrary to the guidelines prescribed by the TAMP.

- (iii). There is no change in the available draft at the Mumbai Port. The dredging done by the MBPT is in nature of routine maintenance, which is fundamental for any Port/ Terminal.
- (iv). The vessels calling at the JNPT/NSICT are required to pay 50% of the Port dues to the MBPT for every call. The MBPT must have made huge surplus without rendering any extra service due to steep increase in traffic at the JNPT/NSICT from 1994 onwards; and, also due to increase in the size of vessels.
- (v). The proposed rate increase shall have severe implications on the vessel-related charges at the JNPT/NSICT. This will make the port call cost at these ports uncompetitive.
- (vi). The Government plans to develop the JNPT/NSICT as a major transshipment hub and the MBPT has a role to play in promotion of hub and spoke concept. Any increase in vessel related cost, therefore, will be detrimental to these efforts.

#### **Indian Merchants Chamber (IMC)**

It has no comments to offer on the MBPT proposal.

3.2. We have not received any comments from the Bombay Chamber of Commerce and Industry, MANSA, WISA, INSA and SCI, despite reminders.

3.3. A copy each of the comments received from the representative bodies of port users and the JNPT was forwarded to the MBPT as feedback information.

4.1. On a preliminary scrutiny of the proposal, the MBPT was requested to submit the proposal as per the proforma prescribed by this Authority for submission of tariff proposals. It was requested also to furnish separate cost statements for the Port as a whole and for the entire vessel related activities. The MBPT was also requested to furnish additional/information/clarifications / comments on certain points. Some of the main points raised are as follows:

- (i). Traffic projections need to be justified with reference to the Port's five year plans/MOU signed with the Govt. The vessel traffic estimates relating to the JNPT shall be indicated separately.
- (ii). Proportion of foreign-going vessels to coastal vessels.
- (iii). The proposal of the MBPT for not increasing Port Dues for coastal vessels appears to be contrary to generally accepted principle. The reasons for requiring the foreign-going vessels to contribute more than the accepted level of cross-subsidy in favour of coastal vessels is to be clarified.

4.2. In response, the MBPT has submitted the proposal in the prescribed proforma alongwith the following clarifications / additional information:

- (i). The disparity in rates between the foreign-going vessel and the coastal vessel need not be maintained now at 100% to 70%, since prior to conversion of vessel-related charges in dollar terms, the Port Dues in respect of coastal vessels were prescribed at 44% of the tariff applicable for foreign-going vessel.

- (ii). The MBPT does not work out service-wise capital employed. The ROCE for the port as a whole is worked out and then apportioned to each of the services on the basis of net block of each service for the purpose of revision of charges.
- (iii). Proportion of foreign-going vessel to coastal vessel is 52:48 and 50:50 for the years 1999-2000 and 2000-2001 respectively.
- (iv). Any increase in Port Dues on coastal vessels will have an adverse effect on the Port's attempt to boost coastal cargo through the Prince's and Victoria docks which are lying unutilised. The MBPT does not like to witness a further fall in coastal cargo.

5. Subsequently, the MBPT was requested to offer additional information/clarification on the various points arising out of its earlier reply. Some of the main points raised are summarised below:

- (i). The vessel traffic projections must include vessels calling at the JNPT; and, income from such vessels need to be indicated separately.
- (ii). Breakup of operating cost and the basis of apportionment of various cost elements.
- (iii). The MBPT has accepted the fact that net block of assets for each services are identifiable. The capital employed and return on capital employed, therefore, need to be calculated specifically for this activity.
- (iv). Reasons for proposing a further increase when the cost statement prima facie, indicates a huge surplus in the region of 70% of the operating income after allowing 18.5% return on capital employed.
- (v). Cost statement in the prescribed proforma for the years 2000-01 (actuals), 2001-02 (BE) and 2002-03 (projected).
- (vi). Reasons for resorting to piece-meal revision of tariff instead of reviewing the whole tariff structure of the Port.

6. An Agreement relating to the procedure to be followed for using the common user channel was signed between the MBPT and the JNPT on 31 August 1989. Clause 18 of this Agreement provides for a review after sufficient experience is gathered in implementation. The Agreement also stipulates that the JNPT will collect and remit to the MBPT the Port Dues leviable as per MBPT's Scale of Rates. The documents furnished by the JNPT indicate that it has already proposed to the MBPT for a review of the Agreement; but, response from the MBPT is awaited for more than a year now. In this backdrop, the MBPT was requested to specifically comment on the points made by the JNPT about review of the Agreement relating to common user channel.

7.1. A joint hearing in this case was held at the MBPT on 13 August 2001. At the joint hearing, the Chairman of this Authority requested the MBPT to specifically address the following points, apart from its submissions on any other issues it would like to argue:

- (i). For vessels going to the JNPT, the MBPT collects 50% of Port Dues. This collection is being made on its behalf by the JNPT with reference to an Agreement between the two Ports. This Agreement has been in existence since 1989. The Agreement itself envisages a review after a few years. The JNPT had, in fact, proposed for a review some years ago. The MBPT has not yet responded. Is it not time for the Agreement to be reviewed instead of simply continuing with the 50% charge?

- (ii). In its computations, has the MBPT reckoned with the revenue earnings to be realised from vessels going to the JNPT?
- (iii). The cost statement shows a (huge) surplus position in respect of the Port Dues cost centre. If this is so, how can a further increase be justified?
- (iv). The Port Dues are being levied on a 'per month' basis even on foreign-going vessels. Can it be on a 'per call' basis?
- (v). Why is the MBPT coming with piecemeal proposals for tariff revisions instead of formulating comprehensive proposals for all activities as is being done by most other major ports?
- (vi). The proposal specifically excludes coastal vessels. But, it has to be understood that, even if there is no revision in the coastal vessel rates, the mere re-adjustment of the 70% figure with reference to the new rate for foreign-going vessels will involve a change in the coastal vessel rate.

7.2. At the joint hearing, the following submissions were made:

**The Mumbai Port Trust (MBPT)**

- (i). Based on the financial results of earlier year accounts, we admitted the 'surplus'. We have spent Rs.26.0 crores on maintenance dredging in 2000-01. We have to spend Rs. 20.0 crores more in 2001-02. We now see that we are in deficit. This warrants a revision of tariff.
- (ii). With reference to recovery of 50% of Port Dues on vessels calling at the JNPT, it needs to be noted that we also incur expenditure. What we get is not, therefore, a total 'gift'.
- (iii). Recovery of 50% of Port Dues on account of the JNPT vessels has been taken into account in our costing.
- (iv). We were not aware of the JNPT letter of 23 July 2000 for a review of the Agreement. The TAMP has pointed out this now. We have not had time to examine the said JNPT letter.
- (v). We need to consult our Board of Trustees to change the frequency of levy of Port Dues from 'per month' to 'per call'. Please allow us time.
- (vi). Regarding piece-meal proposal for revision, we have lot of difficulties this year. We have incurred nearly Rs. 500 crores loss. Our Board has called for all possible efforts to increase revenue. We will explain in detail in our written submission. We will give a complete written submission (covering the points raised in the Authority's letter dated 8 August 2001 also) by first week of September.
- (vii). It is incorrect to think that exchange rate fluctuations always benefit the port. We also incur expenditure in dollar terms (e.g. payment for VTMS). In such cases we end up paying more.
- (viii). Our own oil tanker traffic also requires deeper draft.

**The Container Shipping Lines Association (CSLA)**

- (i). Please take into account additional revenue earning due to exchange rate fluctuation.
- (ii). The JNPT's 50% recovery of Port Dues for the MBPT is a total additionality. It is a bonus to the port. The MBPT spends nothing extra on the JNPT traffic.

**Mumbai and Nhava-Sheva Ship Agent's Association (MANSA)**

- (i). The JNPT traffic requires deeper draft; whereas, the MBPT traffic does not. Why should we pay for the JNPT's requirement?
- (ii). Navigational aids like buoys/markers, etc., hydrographic services and VTMS (especially with respect to fishing vessels) are missing at the Port. Our vessels have repeatedly complained. Nothing happens; but still Port Due is increased.

7.3. The request of the MBPT for time upto 7 September 2001 to file a comprehensive written submission was allowed.

8.1. As decided at the joint hearing, the MBPT has made a written submission giving additional information / clarification on the various points raised by us. The salient points made in the written submission are given below:

- (i). The actual cargo handled at the MBPT is 27.06 MT as against a traffic projection of 28.67 MT as per the MOU for the year 2000-01. It will fall further due to collapse of storm gate and declining trend of traffic witnessed during the last few months. It is confirmed that the vessel traffic projections include vessels calling at the JNPT.
- (ii). A statement indicating breakup of operating cost and basis of apportionment of various cost elements has been furnished.
- (iii). It is not feasible to work out service-wise capital employed with the present accounting system. If it is absolutely essential it may have to be worked out arbitrarily based on some assumptions, which may not reflect the correct position.
- (iv). The cost statement indicates a surplus of 70% for the year 1999-2000, however, for the year 2000-01 there is a cost deficit of 63.3% for the Port conservancy activity. Further, there has been no revision in Port Dues since 1994; and, hence, it is proposed to revise the same now.
- (v). Review of working results of all the services is undertaken every year. If any service is in surplus, revision of rates for that service is not proposed. In other cases, revision has been proposed in that year. Hence, the revision is proposed in piece-meal.
- (vi). Levy of Port Dues, on 'per call' basis will simplify the billing procedure. Since number of vessels calling again at the Port within the same month is not large, rates proposed by the MBPT (on 'once in a month' basis) may be maintained.

8.2. In response to the comments of the JNPT and the CSLA, the MBPT has made the following main points:

- (i). As per the Agreement between the JNPT and MBPT, the MBPT has to maintain a minimum dredged depth of 10.8m in the common user channel, apart from

provision of navigational aids. In fact vessels visiting the MBPT (docks) require a depth of only 9 metres. The maximum depth required by vessels visiting Jawahar Dweep is 10.5 metres. Thus, a depth of 10.8 m is exclusively maintained for the vessels calling at the JNPT.

- (ii). The expense incurred for dredging of common user channel during the year 2000-2001 is about Rs. 25.23 crores whereas the revenue out of Port Dues accruing from the JNPT is just Rs. 7.30 crores which is not sufficient enough to meet these expenses.
- (iii). The depth of 10.8 meters in the channel is maintained only for the benefit of the JNPT. In return, the JNPT is authorised to collect 50% of the Port Dues from the vessels visiting the JNPT. In the event of ship bound for or sailing from the JNPT becoming wreck within the port limits of the MBPT, it will be the responsibility of the MBPT, to remove the wreck as per the Agreement. Taking into consideration all these aspects, recovery of 50% of the Port Dues payable as per MBPT schedule on the vessels visiting the JNPT is justified.
- (iv). With reference to the CSLA contention about additional revenue accrued to the MBPT due to depreciation in rupee, the MBPT has stated that even the Shipping Lines collect freight charges and detention charges on containers in dollar terms and they have benefited more than the ports on account of depreciation in rupee value.
- (v). It is not correct that vessels calling at the JNPT/NSICT are required to pay 50% of Port Dues to the MBPT at every call. In fact, what is remitted to the MBPT by the JNPT is on 'once in a month' basis.

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

- (i). This proposal is made by the MBPT based mainly on the following three grounds:
  - (a). Last revision was in 1994; another revision is, therefore, overdue.
  - (b). The port conservancy service is not suffering any cost deficit; but, the port as a whole is not in the same position.
  - (c). A huge expenditure has been incurred during 2000-01 towards maintenance of the channel.
- (ii). The MBPT initially mentioned that there was no cost deficit under Port Conservancy activity. Subsequently, it has pointed out that the proposal was made based on figures for 1999-2000; but, the cost statement for the year 2000-01 discloses a deficit. It is to be recognised that this Authority has prescribed a tariff validity cycle of two years and, therefore, takes into account the average cost position relating to the succeeding two years to decide on the quantum of increase in tariff to be followed.

The MBPT's approach of reviewing financial results every year and proposing revision on only those activities showing deficit cannot be a rational one. It is a well known fact that the existing tariff structure at all major ports includes elements of cross-subsidisation between different activities. If piece-meal revision, as followed by the MBPT, is adopted, the cross-subsidisation factor (at the existing level) remains unaccounted for. Further, a comprehensive review of

tariff at the specified time interval provides an opportunity to examine various cost elements closely, particularly in respect of overheads allocated between various activities.

Be that as it may, even if the MBPT's argument of piece-meal revision of tariff is accepted, the action (not) taken by it to revise other tariff items remains unexplained in view of the huge cost deficit reported for the Port as a whole.

It is also relevant here to point out that a mere fact of expiry of tariff validity period of two years (or 3 years as earlier prescribed by the Government) cannot be a sole ground to seek an upward revision of tariff.

This Authority has clarified on a number of occasions that a review at the end of the tariff validity cycle need not necessarily result in an upward revision of tariffs.

- (iii). The MBPT has confirmed that its income estimates include income from the JNPT vessels and provision for (future) fluctuation of foreign exchange. The MBPT's comments on the CSLA's observation about additional benefit to the port on account of foreign exchange fluctuation cannot be accepted as relevant. Accrual of a benefit to the Lines due to foreign exchange fluctuation has no relevance to fixation of Port tariffs, except in the context of currency-denomination, in the 'cost-plus' regime of tariff setting.
- (iv). The major cost element in this case is the expenditure of Rs. 25.23 crores incurred during 2000-01 on maintenance dredging. There cannot be two opinions on the CSLA's point that dredging for maintenance of navigable channel is fundamental for any Port. But, it cannot be free of cost; the cost thereof has to be an essential component of the tariff-computation.

Alongwith the position explained above, it is also to be recognised that abnormal expenditure or an accumulated liability or such expenditure incurred which produces benefits over a period of time cannot be allowed to be considered only in the year in which it is incurred. If this is allowed, then the tariffs are made to bear a permanent burden on account of a one time abnormal liability.

The cost statement furnished by the MBPT shows no expenditure on maintenance dredging during the years 1998-99 and 1999-2000. Only in 2000-01, the port has incurred an expenditure of Rs. 25.23 crores. Again, the cost statement indicates no projections of expenditure on this account in the years 2001-02 and 2002-03. (Though the MBPT mentioned at the joint hearing about some expenditure in 2001-02, the cost statement furnished by it does not support its statement). From the position disclosed by these facts, it can be reasonably assumed that the MBPT incurs huge expenditure on maintenance dredging not on an annual basis. That being so, for the purpose of tariff determination, this liability will need to be considered as a deferred revenue expenditure and written off over the number of years for which the benefit lingers on. Since no expenditure on dredging is to be incurred till 2002-03, it is reasonably assumed that the benefit of dredging carried out in 2000-01 will continue to be available till the end of 2002-03. That being so, the expenditure on maintenance dredging is treated as deferred revenue expenditure and written off over the period of three years from 2000-01 in the revised cost statement.

It is relevant here to mention that the cost position for the years 2001-02 and 2002-03 are relevant for this exercise. If the approach adopted by the MBPT to consider the dredging expenditure only for the year 2000-01 is allowed, there

need not be any review of tariff with reference to expenditure on dredging, as cost position for the past has no relevance to fixing tariff for the future.

- (v). The MBPT has furnished a revised cost statement for the Port Conservancy activity for the year 2000-01 reportedly based on its annual accounts. There are major changes in the operating expenditure, management and general overheads and other allocated expenditure as compared to the cost figures furnished alongwith the original proposal. The MBPT has, however, not furnished revised cost statement for the years 2001-02 and 2002-03 based on these revised figures of the year 2000-01. As a result, there is no apparent correlation between the actual expenditure considered for the year 2000-01 with the expenditure projected for the years 2001-02 and 2002-03. In the absence of any revised data for the years 2001-02 and 2002-03 the figures as indicated in the original proposal are retained for these two years.

Further, the cost statement furnished by the MBPT contains many discrepancies particularly with reference to computation of capital employed and ROCE. The MBPT has not given any satisfactory clarifications to the queries raised by us in this regard. In fact, most of these discrepancies were pointed out in this Authority's Order relating to the MBPT's proposal for revision of wharfage charges and Pier Dues relating to its MOT and Pir Pau jetties. Nevertheless, the MBPT has not bothered to take note of the approach adopted in that case to draw up its cost statement in this case. The following modifications have been made in the cost statement furnished by the MBPT to arrive at a fair and reasonable cost position:

- (a). The MBPT has not correctly shown the written down value of assets in the future projections. It has considered the capital employed for the year 2001-02 and 2002-03 same as capital employed of 2000-01. In the revised cost statement, the depreciation of assets relating to the years 2001-02 and 2002-03 has been reduced from the net block figures of the respective years.
- (b). The MBPT has given the working capital for the port as a whole. The working capital for the 'port conservancy' activity has not been indicated separately. Working capital for the years 2001-02 to 2002-03 has also not been furnished. In the absence of any data furnished by the MBPT, the difference between the net block and the capital employed is assumed to be the working capital.
- (c). The net block plus working capital subject to the modifications given above, has been considered as the capital employed for computation of ROCE.
- (d). The MBPT has considered a return on capital employed at the rate of 18.5%. In the revised cost statement, ROCE has been allowed at the rate of 19.5% in line with the ROCE being allowed at present in cases of major port trusts.
- (e). Interest payable on ADB loan has been double counted once as an element of expenditure and again while computation of return on capital employed. This double counting of interest on loan has been eliminated in the revised cost statement.

- (vi). Subject to the analysis made in the foregoing paragraphs, the cost statement for the 'port conservancy' activity has been modified. The modified cost statement is attached as **Annex-I**.

A summary of the cost position for the 'port conservancy' activity disclosed by the cost statement furnished by the MBPT vis-à-vis the modified cost statement is given below:

Year	Net surplus (+) deficit (-) as a percentage of operating income	
	As per MBPT's cost statement	As per modified cost statement
2000-01	(-) 40.5%	(+) 19.8%
2001-02	(+) 64.2%	(+) 32.1%
2002-03	(+) 63.5%	(+) 32.4%

Interestingly, even after a lapse of more than seven years since the last revision of Port Dues, the 'port conservancy' activity continues to show a surplus.

- (vii). Eventhough the 'port conservancy' activity shows a revenue surplus, the Port as a whole, and in particular the Port & Dock facilities, show a cost deficit. This implies that the income from Port Dues cross-subsidises other vessel related tariffs. The stated policy of this Authority is against cross-subsidisation. If cross-subsidisation is to be eliminated completely, the existing rates of Port Dues deserve to be reduced. This Authority has, however, not taken a final view on complete elimination of cross-subsidisation. Total elimination of cross-subsidisation at one go will have serious implications. Recognising this fact, this Authority had decided to contain cross-subsidisation at current levels by not hiking the rates for those activities that show a revenue surplus. In view of the stated policy of this Authority on cross-subsidisation and the revenue surplus position obtained in the relevant activity center, there is no justification to allow an upward revision of Port Dues as proposed by the MBPT.

- (viii). As far as a vessel is concerned, it pays generally three components of port charges viz, Port Dues, Pilotage and Berth hire. At the MBPT, the vessel related activity as a whole is in deficit but Port Conservancy is in surplus. This means, the other two main components of vessel related charges viz, Pilotage and Berth hire may perhaps require upward adjustment. There can be an argument that if cross-subsidy from Port Dues is increased, the level of increase in berth hire and Pilotage, whenever revised, will be less; and, the total impact on vessel will remain more or less the same. That being so, the decision of not revising the Port Dues on a stand-alone basis does not have any significant bearing on the vessels.

Apart from the cost position and cross-subsidisation issue discussed above, the following three points are also relevant for not allowing any increase in the existing rates of Port Dues:

- (a). It is always a better and transparent practice to resort to direct charging bearing in mind the 'quid pro quo' principle for tariff setting emphasised by the Supreme Court of India.
- (b). The proposal is for revision of Port Dues only in respect of foreign-going vessels. The benefit of dredging is equally enjoyed by coastal vessels also. There is no apparent reason to shift the entire burden of dredging

expenditure on foreign-going vessel and make them pay for a portion of other vessel related charges of the coastal vessels. Significantly, information provided by the MBPT reveals that coastal vessel traffic is 50% of the total traffic.

- (c). Vessels calling at the JNPT pay 50% of the Port Dues as per the MBPT tariff for using the common user channel. There is no reason why these vessels are required to cross-subsidise (at an increased level) the deficit in the vessel related activities other than Port Conservancy at the MBPT. It is noteworthy that the vessels calling at the JNPT do not pay Berth hire or Pilotage to the MBPT. That being so, the continuance of these two items of tariff at a lower level at the MBPT due to available cross-subsidy from Port Conservancy is immaterial to them.
- (ix). As per the policy decision of the Government, coastal vessel tariffs are prescribed at 70% of the foreign-going vessel tariffs. Coastal vessel rates are prescribed in rupee terms whereas foreign-going vessel rates are denominated in US dollar terms. In order to restore the tariff differential at the accepted level of 30% (which may have widened due to depreciation of the Indian rupee) vis-à-vis the US dollar since the last revision of tariff), restatement of coastal vessel tariffs is essential with reference to foreign-going vessel rates and the current foreign exchange rates. It is noteworthy that foreign-going vessel rates, although denominated in US dollar terms, are realised in rupees and the cost statement considered for tariff revision accounts for this income in rupees. It is also relevant here to mention that the decision of the Government to allow a 30% concession to coastal vessel was not valid only on the date when foreign-going vessel tariffs were initially denominated in US dollar terms. It is a continuing principle. Viewed in this perspective, the arguments of the MBPT against adjustment of coastal tariff to maintain a disparity level of 30% with the foreign-going vessel rates are found to be misplaced. The MBPT is advised to keep this aspect in mind while proposing revision of vessel related charges in future.
- (x). Another reason advanced by the MBPT for not revising coastal vessel rates is to give a boost to coastal traffic through its P&V docks facility, which is reportedly lying underutilised now. It may be reasonable for a Port to embark on promotional measures to achieve better utilisation of capacity available, provided the financial burden of such measures do not fall on other sections of its users. If the MBPT wants to allow concessional rates to coastal vessels, the resultant financial loss is to be met from its general reserves till anticipated traffic picks up to generate adequate revenue to cover the loss. In the instant case, the MBPT has not only sought passing the additional burden on to foreign-going vessels on account of operating cost but also recovery of 18.5% of ROCE. This means, the Port is not prepared to forego (even) a part of its return in favour of the concessions envisaged but seeks it to be compensated by other sections of users. This approach adopted by the MBPT cannot be said to be very reasonable.
- (xi). As has been mentioned earlier, vessels calling at the JNPT pay 50% of the Port Dues at the MBPT tariff for use of the common access channel. The provision to levy 50% of the Port Dues on such vessels is derived from Section 50B of the MPT Act. While applicability of the provisions contained in Section 50B of the Act to the vessels entering the Mumbai Port limit but carrying out cargo operation only at the JNPT cannot be questioned, it has to be recognised that the arrangement prescribed in the Act for such cases is to be viewed as a provision applicable to cases of a spasmodic nature. Usage of the common access channel by the vessels calling at the JNPT is a regular feature. In such cases it

will be rational to consider a separate fee for use of the common channel instead of linking it with the Port dues payable at one of the connected Ports. It is needless to mention that fees for such usage will be with reference to the costs relevant to the common user channel. Alternatively, the MBPT can seek from the JNPT reimbursement of expenditure incurred on the common user channel. Since common user channel is an asset of the MBPT, it can reasonably demand an accepted level of return on its investment alongwith reimbursement of cost. As a result, the JNPT can directly levy Port Dues on vessels calling at its terminals after revising the existing Port Dues based on the revised costs which will include the re-imbusement (to be) made by it to the MBPT. If such a method of direct charging is adopted, the existing position of the JNPT vessels possibly cross-subsidising the other vessel related activities of the MBPT and also the arguments of the MBPT and the MANSA about the MBPT being forced to incur extra expenditure to maintain the depth in the channel to cater to the vessels calling at the JNPT can be effectively addressed. Significantly, the Agreement in this connection entered into between the MBPT and the JNPT is also (over) due for a review. While reviewing the Agreement, it may be useful for both the Port Trusts to consider the suggestions made above.

In any case, there is no logic of continuing interminably with the existing system of levying 50% of the applicable Port dues on the vessels calling at the JNPT. It has to be recognised that Section 50B of the MPT Act prescribes levy of Port Dues at 50% in the specified cases as a maximum limit. Eventhough, this Authority can prescribe any rate below the maximum level, it is not in a position in the instant case to reduce the rate suo motu in the absence of any supporting cost details with reference to the common user channel. Further, the implication of such a reduction of charge, which is in force for more than a decade and a half now needs to be analysed in depth. That being so, the MBPT is required to address this issue specifically when it formulates its proposal for the next general revision of tariffs or comprehensive review of vessel related charges.

- (xii). The frequency of levy of Port Dues is prescribed in the existing MBPT Scale of Rates on a per-month basis. It may be more rational to levy Port Dues on a per entry basis. The MBPT's suggestion about the number of vessels repeating in the same month being negligible, the existing Port Dues rates (on a per-month basis) can be taken as rates on a per-entry basis also cannot be agreed to in the absence of supporting data furnished by the Port to analyse the implications of such conversion. Since the rates of Port Dues are not revised upward now, the existing basis of charging is allowed to continue till the next review of MBPT Scale of Rates. Nevertheless, the MBPT is advised to specifically consider this position while formulating its proposal for the next comprehensive review / revision of its Scale of Rates.
- (xiii). The MBPT has proposed an amendment to the existing conditionality in the Scale of Rates with reference to the levy of Port Dues in respect of vessels plying between the MBPT and the JNPT. This amendment is proposed mainly to distinguish between the vessels using only the common user channel to have access to the JNPT and those vessels which ply exclusively between the MBPT and the JNPT for carriage of goods. The amendment proposed is more for avoiding any ambiguity in charging. That being so, the proposed amendment, deserves to be approved. It appears that the reference of 'harbour limit' made by the MBPT is not relevant for the purpose of levying port dues. Port Dues are levied for entry into the port limits. There is no need to mix up between 'Port limit' and 'Harbour limit'.

It is understood that vessels paying full port dues at the MBPT are not levied 50% share of MBPT's Port Dues again at the JNPT. In the cases of vessels plying exclusively between the JNPT and the MBPT, the non admissibility of 50% of MBPT's Port Dues for entry into the JNPT needs to be explicitly mentioned in the Scale of Rates to avoid ambiguity.

- (xiv). The MBPT has also proposed amendment of the existing conditionality relating to re-conversion of dollar denominated tariffs at the time of billing. This Authority has already passed a common adoption Order in this regard. That being so, the formulation already approved by this Authority in the common adoption Order is formally inserted in the Schedule relating to the Port Dues.
- (xv). The issue relating to charging daughter vessels at the MBPT was considered by this Authority as a part of the proceeding relating to the MBPT's proposal for revision of wharfage and pier dues at the Marine Oil Terminal and Pir Pau. In that case, it was decided to insert a specific provision in the relevant Scale of Rates to prescribe that the status of the vessel as borne out of its certification should be the deciding factor for the purpose of levying vessel related charges. Even though this issue has not been raised as a part of this case, for the sake of internal consistency between the different Scales of Rates of the MBPT, a similar provision is also inserted in the Scale of Rates in reference.

10.1. In the result, and for reasons given above, and based on a collective application of mind, this Authority rejects the proposal of the MBPT for revision of Port Dues on all vessels except coastal vessels. The MBPT is advised to immediately formulate its proposal for a comprehensive review of its Scale of Rates for all activities.

10.2. The following amendments to the MBPT's Schedule of Port Dues are approved which will become effective on expiry of 30 days from the date of notification of this Order in the Gazette of India:

- (i). The existing explanation number (4) is deleted and substituted by the following:

*"(4). The vessels visiting JNPT, if for any reasons same vessels visit the MBPT, half of the Port dues recoverable as per the above Schedule shall be levied. However, vessels plying exclusively between the MBPT and the JNPT for carriage of cargo shall be levied full Port Dues as per the above Schedule. Vessel paying full Port Dues at the MBPT need not pay 50% of MBPT's Port Dues at the JNPT".*

- (ii). A new note number (7) is inserted as follows:

*"(7). The status of the vessel, as borne out by its certification, shall be the deciding factor for classifying into 'coastal' or 'foreign-going' category for the purpose of levying vessel related charges; and, the nature of cargo or its origin will not be of any relevance for this purpose".*

10.3. This Authority also approves the amendment to the existing explanation number (6) to incorporate the following provisions:

- (6). (a). *The charges prescribed for foreign-going vessels in this Schedule will be collected in Indian rupees after conversion of the US currency to its equivalent Indian Rupees at the Market Buying Rate notified by the Reserve Bank of India, State Bank of India or its subsidiaries or any other Public Sector Banks as may be specified from time to time. The relevant exchange rate prevailing on the date of entry of the vessel into the port limit shall be reckoned with in such cases.*

(b). *A regular review of exchange rate shall be made once in thirty days from the date of entry of the vessels in cases of vessels staying in the Port for more than thirty days. In such cases the basis of billing shall change prospectively with reference to the appropriate exchange rate prevailing at the time of the review.”*

The amendment proposed at para 10.3 is only for formal insertion and has already come into effect as prescribed in the common adoption Order passed in this regard by this Authority.

**( S. Sathyam )**  
Chairman

## REVISED COST STATEMENT FOR PORT CONSERVANCY SERVICE /FACILITY AT THE MBPT

(Rs. IN LAKHS)

SR NO.	PARTICULARS	1998-99	1999-00	Base Year	Without Change	
				2000-01	2001-02	2002-03
I	Operating Income					
	i). Port Dues	1,935.92	2,250.20	2,547.07	2,302.07	2,370.08
	ii). Anchorage	-	99.26	101.31	101.31	101.31
	iii). Fees for water conveyance	25.38	92.77	133.34	40.00	40.00
	iv). Miscellaneous income	87.12	56.82	59.61	59.61	59.61
	<b>TOTAL OPERATING INCOME I :</b>	<b>2,048.42</b>	<b>2,499.05</b>	<b>2,841.33</b>	<b>2,502.99</b>	<b>2,571.00</b>
II.	Operating Cost					
	i). Operating Cost	259.12	340.26	506.83	446.38	480.57
	ii). Deferred Dredging cost			841.07	841.07	841.07
	iii). Depreciation	46.73	48.75	51.29	51.29	51.29
	<b>TOTAL OPERATING COST II :</b>	<b>305.85</b>	<b>389.01</b>	<b>1,399.19</b>	<b>1,338.74</b>	<b>1,372.93</b>
III.	Finance & Miscellaneous Expenditure	75.20	70.18	317.41	87.48	90.72
IV.	Management and General Overhead Expenditure	106.85	107.65	403.49	124.78	134.34
V.	<b>SURPLUS/ DEFICIT (I-II-III-IV)</b>	<b>1,560.52</b>	<b>1,932.21</b>	<b>721.24</b>	<b>951.99</b>	<b>973.01</b>
VI.	Interest on ADB Loan	46.21	43.61	40.21	35.89	31.45
VII.	<b>NET SURPLUS/ DEFICIT (V - VI)</b>	<b>1,514.31</b>	<b>1,888.60</b>	<b>681.03</b>	<b>916.10</b>	<b>941.56</b>
VIII.	Capital Employed	1,019.41	1,184.38	814.22	762.93	711.64
IX.	Return on capital employed @ 19.5%	198.78	230.95	158.77	148.77	138.77
X.	Return on capital employed @ 19.5% less interest on loans (IX-VI)	152.57	187.34	118.56	112.88	107.32
XI.	<b>NET SURPLUS / DEFICIT - after ROCE and interest on loans (VII - X)</b>	<b>1,361.74</b>	<b>1,701.26</b>	<b>562.47</b>	<b>803.22</b>	<b>834.24</b>
XII.	<b>NET SURPLUS/ DEFICIT as a percentage of operating income (XI/ I)</b>	<b>66.5%</b>	<b>68.1%</b>	<b>19.8%</b>	<b>32.1%</b>	<b>32.4%</b>