No.64

New Delhi, the 25th May, 2000

TARIFF AUTHORITY FOR MAJOR PORTS

NOTIFICATION

No.TAMP/108/99-CPT - 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 disposes of the application made by M/s. Mercator Lines Limited as in the Order appended hereto.

SCHEDULE

Case No. TAMP/108/99-CPT

M/s. Mercator Lines Limited ... Applicant

Vs.

The Calcutta Port Trust (CPT) ... Respondent

ORDER

(Passed on this 12th day of May 2000)

This case relates to applications dated 1 September 99 and 10 September 99 from Mercator Lines Limited about their coastal vessels (MT.NALON and MT.RICHA) being charged ‘foreign-going’ rates by the Calcutta Port Trust (CPT) and the Haldia Dock Complex (HDC). They have stated that these two vessels are plying on a dedicated coastal run on the basis of coastal licence issued by the Director General (Shipping). The cargo is loaded ex-shore tanks of IOCL, Paradip Terminal and meant to discharge at Budge Budge into IOCL shore tanks. The CPT
and the HDC are classifying these vessels as foreign – going and charging tariffs as such.

2. In accordance with the procedure prescribed for processing of such cases, the CPT was requested to offer their comments on the applications of Mercator Lines Limited.

3. The relevant comments of the CPT are as follows:
   
   (i) The Scale of Rates of the CPT have been superseded by the TAMP’s notification No.TAMP/2/97-MPT dated 1 July 98.
   
   (ii) Paragraph 3(iii) of the aforesaid Notification states “in case of such conversion, coastal rates shall be charged by the load port from the time the vessel starts loading coastal goods”.
   
   (iii) A converted coastal vessel can enjoy coastal marine rates only she carries coastal goods.
   
   (iv) The Customs Act defines coastal goods.
   
   (v) In these cases, the vessels carried foreign cargo from another Indian Port to Calcutta/Haldia.
   
   (vi) The entire exercise to charge differential rates for coastal and foreign vessels is to offer certain economic concession to coastal goods.
   
   (vii) Under these circumstances, marine charges meant for foreign-going vessels are charged on these vessels.

4. As can be gauged from the replies of the CPT, it is seen that the problem has apparently been caused by the phrase “coastal goods” used in the Authority’s Order dated 2 June 98 in which the Authority had prescribed a system of classification of vessels as ‘coastal’ and ‘foreign-going’ for tariff purposes.

5. The Order in reference of the Authority was passed on 2 June 98 with reference to a case relating to the Chennai Port Trust (CHPT). Although the Order specifically stated that the system of classification prescribed therein
was for common adoption by all the major ports, there was still doubt in the minds of some ports about its applicability to their cases. To remove this confusion, the Authority passed another Order on 15 April 99 clarifying the position and reiterating that the system of classification prescribed would be effective from 1 July 98. With reference to this clarificatory notification, the CPT appears to have taken some decisions on the subject with effect from 1 July 98 which has caused further confusion about rates being revised with retrospective effect.

6. It is well known that, in accordance with Government’s stated policy, some concessions are given in vessel-related charges for encouraging coastal traffic. The Order in reference of the Authority was passed to introduce a uniform system of classification of vessels as ‘coastal’ and ‘foreign-going’ in the context of these concessions in vessel-related charges. But, the CPT appears to have laid emphasis on the phrase ‘coastal goods’; taken recourse to the definition given in the Customs Act of ‘coastal goods’; and, classified the vessels with reference to the ‘goods’ carried.

7. A joint hearing was held in this case at the CPT on 26 April 2000. The main points raised at the joint hearing are summarised below:

**Mercator Lines Limited**

(i). Our vessels were earlier classified as ‘coastal’. But, the CPT has now changed to ‘foreign-going’ rates with reference to ‘origin of the cargo’. This approach is wrong. The concessions are given in vessel-related charges; and, the status of a vessel is determined by its Certification and not by the cargo it carries.

(ii). The Scale of Rates of CPT does not make any distinction between ‘coastal cargo’ and ‘foreign-cargo’ for purposes of cargo-related charges. Why should the CPT suddenly introduce a concept of ‘origin of cargo’ and for determining vessel-related charges at that?

(iii). Classification of vessels as ‘coastal’ or ‘foreign-going’ must be determined with reference to the Certificate issued by the Director General of Shipping or by the Customs as the case may be. If there is any doubt, provisions of the Merchant Shipping Act must be referred to. The provisions of the Customs Act are not relevant at all. The CPT’s Scale of Rates contains clear provisions in this regard. The 2 June 98 Order of the TAMP only introduces some
modifications. It does not supersede all the relevant provisions of the Scale of Rates as (wrongly) claimed by the CPT. There was, therefore, no need for the CPT to alter the earlier classification of our vessels as ‘coastal’. Even with reference to the 2 June 98 Order of the TAMP, the position does not change. The CPT has introduced confusion by misapplying the phrase ‘coastal goods’.

(iv). All our vessels have been duly certified by the Director General of Shipping to be ‘coastal’ in status. In fact, one of our vessels (viz. MT. RICHA) is a totally coastal vessel in the sense that, with reference to its life period, we have no option for its re-conversion to ‘foreign-going’.

(v). The CPT has not appreciated the spirit of the TAMP Order. Apparently, the intention behind it was to encourage coastal traffic and not to emphasise ‘origin of cargo’.

(vi). We are an Indian party. We carry cargo for an Indian customer viz. the Indian Oil Corporation. We carry the said cargo from one Indian port (viz. the Paradip Port) to another Indian port (viz. CPT/HDC). That the cargo involved is ‘Customs-bonded’ is not of any material significance. What is of significance is the fact that it had entered the Indian port of Paradip and landed there.

(vii). It is also noteworthy that our vessels carrying the said ‘bonded cargo’ from the Paradip Port to the CPT/HDC are being treated as ‘coastal’ by the Paradip Port Trust.

(viii). The Order in reference of the TAMP has five operative clauses. From the wording of the clauses, it is apparent that Clauses 3(i) to 3(iv) refer to vessels having ‘Coastal Voyage Licenses’ involving conversions with reference to cargo operations. Clause 3(v) *ibid* obviously refers to cases of dedicated coastal vessels. Our vessels are covered by ‘specified period licences’; and, as such, they fall in the category of dedicated coastal vessels. That being so, paragraphs 3(i) to 3(iv) of the TAMP Order are not at all relevant to our case; we are covered only by paragraph 3(v). The CPT has misapplied the TAMP Order in our case.

**INDIAN OIL CORPORATION**

(ix). The intention behind the TAMP Order was obviously to promote coastal trade. Apparently, there was no intention to emphasise ‘origin of cargo’. The CPT is misapplying the Order.
(x). All the vessels engaged by us are ‘coastal’ in status, dedicated to coastal trade. The Director General of Shipping has certified them to be so also. Significantly, the Paradip Port Trust and the Visakhapatnam Port Trust also treat them as such.

(xi). The CPT also was earlier treating our vessels as ‘coastal’. They have changed their classification with reference to the TAMP Order.

**SHIPPING CORPORATION OF INDIA**

(xii). The concessions given to ‘coastal’ traffic are in respect of vessel-related charges (VRC). How can VRC be covered by nature of cargo? This is total distortion of billing by the CPT.

(xiii). Nature of vessel must be the sole criterion for determining concessions in VRC. ‘Origin of cargo’ has no relevance at all.

(xiv). There was no need for the TAMP Order. If there was any error in classification, it could have been dealt with in different ways. Unnecessary complication has been introduced by mixing vessel-related and cargo-related charges.

**CALCUTTA PORT TRUST**

(xv). The CPT has not ignored the spirit of the TAMP Order. On the contrary, it has gone *ipso facto* by the Order which emphasises coastal cargo.

(xvi). In this case, VRC cannot be seen totally in isolation. Reference to cargo-related charges (CRC) is necessary to decide on actual conversion and actual levy of tariff.

(xvii). In tariff fixation, ‘what the traffic can bear’ is a relevant principle. Nature of cargo is a factor relevant to its value. ‘Coastal goods’ has been defined in the Customs Act.

(xviii). ‘Foreign-going vessels’ have a higher capacity to pay. The two vessels in reference are foreign going. They
were only converted temporarily. They cannot, therefore, be taken to be ‘dedicated coastal vessels’. Section 3(16) of the Merchant Shipping Act defines ‘home trade ships’; only such ships can be called ‘dedicated coastal vessels’.

It has also be recognised that all the three ships in reference have a GRT greater than 3000 MT which is the limit prescribed under Section 3(16) of the Merchant Shipping Act for ‘home trade ships’.

(xix). In any case, the certification for the three vessels in reference is only intermittently available. They have been calling at the CPT/HDC even during the ‘gap periods’.

(xx). All the three ships in reference did not carry goods for home consumption. They had, in terms of the Customs Act, therefore, to be treated as ‘foreign-going’.

(xxii). Clause 2.26 of the Scale of Rates was amended by the TAMP Order. That being so, there can be no question of our misinterpreting or misapplying either the Order or the Scale of Rates.

(xxii). We do not agree that the TAMP Order was intended mainly for ‘coastal voyage ships’ involving conversion with reference to cargo operations; and, that only paragraph 3(v) applies to the three vessels in reference. An Order has to be read in toto. What is given in paragraph 3(iii) cannot be extinguished by paragraph 3(v). The Applicants are distorting interpretation of the TAMP Order.

(xxii). We corrected our billing with reference to the TAMP Order. But, HDC started charging foreign-rates in such cases from 1997 itself on the basis of a letter from the Ministry of Surface Transport requiring the major ports to charge ‘foreign-rates’ in such cases.

8. With reference to the totality of information collected during the processing of this case, and on the basis of a collective application of mind, the following position is seen to emerge:

(i). The problem under discussion is made out to have been caused by this Authority's Order dated 2 June 98 about classification of vessels as ‘coastal’ and ‘foreign-going’. But, it must be pointed out that the problem has been caused not by the Order but by its interpretation and application by the CPT. Be that as it may, it is ironic that an order meant to clarify a position should have given an opportunity for achieving the opposite.
(ii). It is not correct to say, as has been argued by the SCI, that there was no need for such an order. In fact, there was a specific demand for introducing uniformity of definitions and approach in the matter at all the major ports.

(iii). As has been rightly stressed by the Applicant and the Indian Oil Corporation, and as has been stated in the body of the Order itself, the impugned order was passed by this Authority with the specific intent of encouraging coastal traffic. This was done with reference to the stated governmental policy of promoting coastal traffic by giving concessions in vessel-related charges.

(iv). Vessel-related charges are levied with reference to the status of the vessel. The status of a vessel is determined by its Certification. The nature of cargo or ‘origin of the cargo’ has no relevance in this context at all.

(v). For matters relating to vessels in the context of tariff, the Major Port Trusts Act and the Merchant Shipping Act are the relevant Statutes; provisions of the Customs Act cannot be brought in to override their prescriptions.

Significantly, as has been pointed out by Mercator Lines Limited, for purposes of cargo-related charges, there is no distinction between ‘coastal’ and ‘foreign’ cargo; or, any reference to the Customs Act. It is not clear, therefore, why the CPT suddenly introduced a concept of ‘origin of the cargo’ for determining vessel-related charges at that.

Possibly, the CPT understood the impugned order to amount to a total supersession of all the relevant clauses in its Scale of Rates. Some indication to this effect was available in the arguments advanced at the joint hearing. It will, therefore, be necessary to specify that the 2 June 98 Order was only to introduce some clarifications about the conversion process and not to supersede any basic provisions already available in the Scale of Rates.

(vi). Admittedly, the vessels in reference here are duly covered by such Certification from the Director General of Shipping. There should, therefore, have been no doubt about their status in the face of such definite documentation. Even if, as alleged by the CPT, the Certification was only intermittently available, there should have been some problem in treating these vessels as ‘coastal’ only during the ‘gap periods’. It is not clear why the CPT has chosen to discredit the certification altogether.

Significantly, the Visakhapatnam Port Trust and the Paradip Port Trust are reported to be recognising these
vessels as ‘coastal’ vessels based on the same Certification and with reference to the same (or, similar) cargo. Interestingly, the CPT itself had earlier been recognising them as ‘coastal’ vessels!

(vii) The CPT argument that vessel-related charges cannot be seen totally in isolation is not correct. Its insistence on reference to cargo-related charges to decide on actual conversion and actual levy of (vessel-related) tariff is incomprehensible.

The argument that the nature of cargo is relevant to its value which is necessary for fixing the tariff on the principle of ‘what the traffic can bear’ is valid. Only, this is relevant to cargo-related charges and not to vessel-related charges.

(viii) The CPT argument relating to ‘home trade ships’, ‘goods for home consumption’, etc., are not germane to the issue in focus, and are not, therefore, gone into.

(ix) The Applicants’ argument about paragraph 3(i) to 3(iv) of the impugned Order of this Authority referring to ‘coastal voyage licenses’ and only paragraph 3(v) ibid referring to ‘specified period licenses’ is also misplaced. The Order is meant to cover all cases of conversion to ‘coastal’ status as follows:

Ø Conversion, on the basis of a Customs Conversion Order of an Indian vessel with a general license.

Ø Conversion, with reference to a ‘Specified Period License’ issued by the Director General of Shipping, of a ‘foreign-going’ vessel.

Ø Conversion, with reference to a ‘Coastal Voyage License’ issued by the Director General of Shipping, of a ‘foreign-going’ vessel.

Paragraph 3(v) ibid was meant to cover cases of Indian vessels registered only for ‘coastal’ runs. That was why it was stated therein that, in such cases, no other documents would be required. It was not meant to cover any cases of ‘converted vessels’ at all.

The reference of loading and unloading of cargo was made in our earlier order of 2 June 98 to specify the process of
giving effect to the Conversion Order / Licence in respect of foreign-going vessels. In other words, the cargo loading / unloading aspect should be seen as a ‘conversion factor’ and not as a ‘characteristic feature’ of the status of the vessel.

(x). As earlier stated, the specific intent of the 2 June 98 Order was to promote coastal traffic. For purposes of vessel-related charges, in terms of the provisions of the Merchant Shipping Act, ‘coastal’ has to be taken to mean ‘from one Indian Port to another Indian Port’. The nature of cargo or its origin will be of no relevance for this purpose. So long as the voyage is from one Indian Port to another Indian Port, it will remain ‘coastal’ irrespective of whether the vessel carried Indian or foreign cargo. That the vessels in this case were carrying Customs-bonded cargo cannot, therefore, be of any consequence to classification of the vessel. As earlier stated in paragraph 5(vi) above, what is significant is the fact that the said foreign cargo had entered the Indian port of Paradip and landed there.

(xi). At the joint hearing, the CPT has incidentally referred to an old communication from the Ministry of Surface Transport to the effect that cases of such ‘transhipped cargo’ should be deemed to be cases of ‘foreign-going’ vessels. This instruction appears to have been the consequence of an audit objection about loss of revenue caused by wrong classification of vessels. In the light of what has been stated above, the said communication cannot be said to have correctly appreciated the legal position. In any case, an executive circular of the Government cannot restrict the scope of statutory jurisdiction of this Authority.

9. In the result, and for the reasons given above, the Authority allows the application submitted by M/s. Mercator Lines Limited and rejects the contentions of the CPT.

10. The CPT is directed to treat the vessels in reference as ‘coastal’ for the purpose of charging vessel-related charges with effect from 1 July 98.

11. Notwithstanding the fact that this case is disposed of by this Order, it will be necessary to consider a possible elaboration of the 2 June 98 Order to remove all ambiguities and inadequacies of expression. This Authority will take a total view in the matter separately taking also into account the other issues in this connection raised by some other ports.

S.SATHYAM, Chairman