Tariff Authority for Major Ports

NOTIFICATION

In exercise of the powers conferred by Sections 48, 49 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the representation made by the Calcutta Port Trust against the Order of the Authority dated 4 February 2000 relating to fixation of penal interest on delayed payments by the users and also penal interest on delayed refunds by the Port Trust, as in the Order appended hereto.

(S. Sathyam, Chairman)

Case No. TAMP/8/2000 – Genl.

The Calcutta Port Trust ... Applicant

ORDER

(Passed on this 19th day of July 2000)

This Authority had passed an Order on 4 February 2000 relating to imposition of 24% interest equally on delayed payment by users and delayed refunds by the Port Trusts. This Order was notified in the Gazette of India, Extraordinary on 23 February 2000 as Gazette No.20.

2.1. The Calcutta Port Trust (CPT) has made a representation against the Order. Arguing that it has no legal validity, the CPT has demanded rescission / withdrawal of the Order with intimation to all the Major Ports.

2.2. The CPT has raised following objections against the Order:

(i). Sections 112 to 119 under Chapter 9 of the MPT Act deals with imposition of penalties. It has not been prescribed in these
Sections that penalties will be attracted for delayed payment.

(ii). Charging interest in the ordinary course of business is not treated as imposition of penalty. Therefore, the instant Order is out side the purview of the MPT Act.

(iii). The TAMP is authorised to frame scale of rates and statement of conditions under Section 48 to 51 of the MPT Act. Refund of overcharge is regulated by the provisions of Section 55 of the Act; and, the Board is vested with the power under this Section to remit overcharge made in its bill at any time. There is no time limit for making refunds of overcharges prescribed in Section 55 of the Act.

(iv). Only the Central Government can give directions to the Board in such matters under Section 111, if necessary at all.

(v). The condition under which refunds of overcharges will be accepted has also been prescribed under Section 55 of the MPT Act. The conditions incorporated in Section 55 of the MPT Act and the conditions incorporated in the Order of the TAMP are not at par.

(vi). The order is infringing the provisions of the Act and the powers given to the Board under Section 55 and 129 of the MPT Act.

3. With reference to the totality of information available, and based on a collective application of mind, the following position emerges in respect of the issues agitated by the CPT:

(i). Sections 112 to 119 of MPT Act (i.e., Chapter X; and, not Chapter – 9, as mentioned by the CPT) deal with imposition of penalties for contravening the provisions of the MPT Act. As correctly pointed out by the CPT, charging interest in the ordinary course of business is not treated as imposition of penalty. The impugned Order speaks about levying of interest during the ordinary course of business.

(ii). Reference by the CPT to Section 129 of the MPT Act is irrelevant. Section 129 is about application of certain provisions of the Act to aircraft.

(iii). Section 55 of the Act stipulates a time limit for claiming refund of an overcharge made by a Port Trust. The provision under Section 55 reads as follows:

“Provided that a Board may of its own motion remit overcharge made in its bills at any time”.

The CPT is perhaps relying on the words ‘at any time’ to base its argument that refund of overcharge can be made by it at any time. The provision under Section 55 is only empowering the Board to decide on refunding the overcharge suo motu,
without waiting for an application from a claimant; and, in such a decision the time limit of 6 months may not apply. The CPT’s interpretation of applicability of the words ‘at any time’ to the main Clause of Section 55 is not correct.

(iv). Just as this Authority can not prescribe anything outside the scope of MPT Act, the CPT can also not charge something not specified by the Act. The CPT is levying a penal interest of 18% on delayed payments of lease rentals. The CPT has included a provision to levy such a penal interest in its schedule of rents for land and building at Haldia.

(v). This schedule, as proposed by the CPT, has also been approved by this Authority. By proposing inclusion of a provision for penal interest on delayed payments in its schedule of rent, the CPT has recognised that –

levy of penal interest on delayed payment arises in the context of normal course of business;

it can be included in the statement of conditions under which its properties are used; and,

this Authority can make such a prescription.

(vi). The above referred condition in the Scale of Rates (for land and buildings) of the CPT is applicable only on defaulting tenants / lessees of the CPT’s land. What the impugned Order prescribes is to make such a penalty applicable to both the parties; and, to extend the principle (accepted by the CPT) also to the payments arising in the context of services rendered by the Port Trust and / or use of properties of the Port Trust.

(vii). It is to be recognised that the intention behind the Order is to prescribe a uniformity of penal interest payable both ways i.e. by Port Users as also by the Port Trusts. In other words, whatever is the time limit or the penal rate of interest prescribed, such prescription will uniformly apply to both the sides relevant to any transaction.

5. In the result, and for the reasons given above, there is no reason to interfere with the Order dated 4 February 2000. Accordingly, the representation of the CPT is rejected.

(S. Sathyam, Chairman)