

No. 78

New Delhi, the 17 April, 2001

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 prescribes commonly for all the major port trusts a conditionality about classification of vessels for the purpose of levying vessel-related charges as in the Order appended hereto.

(**S. Sathyam**)

Chairman

O R D E R

(Passed on this 8th day of April 2002)

A representation of M/s. Mercator Lines Limited about classification of vessels into coastal or foreign-going category for the purpose of levying charges by the Kolkata Port Trust (KoPT) was decided by this Authority vide its Order dated 12 May 2000. The Order categorically clarifies that for the purpose of levying vessel related charges, coastal vessels shall be taken to mean the vessels ‘from one Indian Port to another Indian Port’; and, the nature of cargo or its origin will be of no relevance for this purpose.

1.2. This Authority had also taken similar decisions in respect of representations received from M/s. Shiva Marketing Limited and M/s. Sentrans Maritime Pvt. Limited relating to the KoPT.

1.3. In its Order dated 28 March 2001 relating to general revision of the Scale of Rates of the KoPT, this decision was reiterated.

1.4. Eventhough the issues involved in these cases are relevant to all the major ports, this Authority has, however, not extended this decision so far to the other Major Port Trusts through a common adoption Order.

2. While disposing of another case relating to a proposal of the Mumbai Port Trust (MBPT) for a revision of wharfage charges on crude oil, POL products and chemicals and pier dues at the Marine Oil Terminal and Pir Pau, this Authority had extended the decision taken in case of the KoPT to the MBPT vide its Order dated 28 June 2001 which was notified on 9 July 2001. In this Order, this Authority has held the following:

“It is to be admitted that the decision taken by this Authority about levying charges on daughter vessels at the CPT has not yet been extended to the other major ports through a common adoption order, although the issue is relevant to all Major Ports. While the matter can be processed further for issuing a common adoption order, the MBPT case can be decided immediately by extending the decision taken in the case of CPT. The MBPT, therefore, is directed to levy only coastal rates on daughter vessels receiving cargo from the mother vessels in midstream and discharging it at the MBPT piers or carrying it to other Indian Ports. It needs to be clarified that this procedure is to be adopted for realising vessel-related charges without prejudice to observance of necessary Customs formalities for clearance of cargo.”

3.1.1. In this backdrop, it was decided to consult all the Major Port Trusts (except the KoPT and the MBPT), INSA, CSLA, SCI, all the Steamer Agents’ Association and All Chambers of Commerce & Industry at the major port cities before extending the decision of this Authority to all the Major Port Trusts.

3.1.2. In this regard, letters were sent to all the identified organisations on 1 August 2001 for their comments on inclusion of the following provision in the SORs of the other Major Port Trusts:

“The status of the vessel, as borne out by its certification, shall be the deciding factor for its classification as ‘coastal’ or ‘foreign-going’ 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.”

3.2. The comments received from the Port Trusts are summarised below:

(i). The Paradip Port Trust (PPT), the Cochin Port Trust (COPT) and the Jawaharlal Nehru Port Trust (JNPT)

have agreed with the proposed provision.

- (ii). The Tuticorin Port Trust (TPT) has opined that a comprehensive Order providing definition of 'coastal' and 'foreign-going vessel' as well as the provisions relating to the conversion of foreign-going and coastal vessel in one single notification is necessary to bring clarity and eliminate complications of billing. The TPT has, however, expressed its agreement with the proposed provision.
- (iii). The Chennai Port Trust (CHPT) has stated that the deciding factor for classification of a vessel as coastal or foreign-going is the nature of cargo and its origin, as intended under Section 51 of the Major Port Trusts Act 1963 as well as under certain clauses given in the SOR of the CHPT. If the proposed provision is included, then it will be contravening Section 51 of the Major Port Trusts Act. The CHPT has, therefore, requested not to include the proposed provision, which does not take into account the nature of the cargo or its origin for classification of the vessels as it may lead to loss of legitimate revenue to all the Major Ports Trusts.
- (iv). The Kandla Port Trust (KPT) has stated that the nature and the origin of the cargo will have no relevance only in case of a vessel which is used exclusively for coastal trade; and, therefore, it has indicated its preference to consider the nature, origin/destination of the cargo for determining the status of the vessel as coastal or foreign-going in case of conversion into foreign-going.
- (v). The Visakhapatnam Port Trust (VPT) has stated that in case of transshipment of cargo from one vessel to another vessel at an Indian Port for subsequent discharge at another Indian Port, the Port at which such transshipment takes place cannot be treated as the load Port as the intermittent operation of transshipment is carried out for the convenience of vessels and hence the vessel loading such transshipment cannot be treated as coastal vessel. In such a case, the origin of the cargo shall be taken as the basis for deciding the status of a vessel as foreign-going or coastal, but not by the intermittent Port where cargo is transhipped.
- (vi). The New Mangalore Port trust (NMPT) has invited the attention to the explanation given in Part II of the first Schedule of the Indian Ports Act 1908 which indicates relevance of cargo for classification of vessel.

3.3. Despite a number of reminders, comments have not been received from the Mormugao Port Trust (MOPT) so far. It is noteworthy that all the port trusts were requested to furnish their comments by 27 August 2001

3.4. Comments have been received from Chennai Steamer Agents Association, Tuticorin Steamer Agents Association, Kanara Chamber of Commerce & Industry, Utkal Chamber of Commerce & Industry, Tuticorin Chamber of Commerce, Association of Shipping Interest in Calcutta, Visakhapatnam Port User Association, Cochin Steamer Agents' Association, Federation of Port Users and Custom House Agents', Hindustan Chamber of Commerce, Madras Chamber of Commerce and Industry, Container Shipping Lines Association (India), Mangalore Steamer Agents' Association, Calcutta Chamber of Commerce, Kalinga Steamship Agents Association, the Indian Oil Corporation Limited (IOCL) and the Oil Co-ordination Committee (OCC).

3.5.1. All the user organisations have fully agreed with the proposal of the inclusion of the proposed provisions in the Scale of Rates of Major Port Trusts.

3.5.2. The Chennai Steamer Agents Association has further requested that the amendment must be made with retrospective effect from July 1998 in line with the decision of this Authority taken in the case of M/s. Mercator Lines Limited. It has also suggested that in the proposed amendment, the word 'certification' may be replaced by the words 'certification by Customs Authorities or D.G. Shipping' for the purpose of clarity.

3.6. The Indian Oil Corporation Limited (IOCL) has stated that while all the ports are collecting vessel-related charges based on coastal tariffs in respect of their vessels, the CHPT, the VPT, the KOPT and the KPT are following different methods at different times for calculation of these charges. On being pointed out, only the KoPT and the CHPT (partly) has given assurance of refund. Their cargo brought in by the larger vessels up to the Indian coast is transhipped into smaller vessels, (which are Indian coastal vessels) off the port/within the port for ultimate delivery to destination the port. The IOCL has also prayed that the proposed amendment may be given retrospective effect from 2 June 1998.

3.7. The Oil Co-ordination Committee (OCC) has communicated that there is no consistency in the

methodology of charging Marine dues at different ports, and requested to resolve this pending issue.

3.8. Comments have not been received from other user organisations despite of a number of reminders issued in this regard.

4. With reference to the comments received from the Major Port Trusts and the representative bodies of port users, the following position emerges:

- (i). The case relating to M/s. Mercator Lines Limited - vs - Kolkata Port Trust has set the following position:
 - (a). Vessel-related charges are to be levied with reference to the status of the vessel.
 - (b). The status of vessel is determined by its certification. The nature of cargo or 'origin' of cargo has no relevance in this context at all.
 - (c). With reference to this Authority's Order in the Mercator Lines case, the Calcutta Port Trust has referred to an advice given by the Ministry of Surface Transport in 1986 to levy the charges at foreign-going vessel rates on the daughter vessel, which carry foreign cargo even if transshipment takes place from mother vessel at the Indian Port. While dealing with the objection of the KoPT as a part of the case relating to general revision of its Scale of Rates, this Authority had observed that the Government communication cited by the KoPT could only be seen as an executive instruction which could not supersede the statutory Order passed. This Authority, therefore, found no reason to review its decision relating to the classification of vessels for the purposes of levying vessel-related charges.
- (ii). It has been the stated policy of this Authority to adopt uniform principles, approaches, and norms in the matter of tariff fixation at the Major Port Trusts. The principle already set in the case of one of the Major Port Trusts and, extended to another can be made to apply uniformly to all the other Major Port Trusts.
- (iii). The issue now in consideration is about introduction of a specific provision in the Scales of Rates of all the major ports for classification of vessels for the purpose of levying vessel-related charges. Users

have unanimously endorsed the proposed provision. Out of the 11 major ports, the proposed provision is already in operation at 2 ports and 4 more ports have now agreed to the introduction of the proposed provision. The MOPT has not responded. In effect, only 4 major ports have expressed some reservations about inclusion of the proposed provision in their Scale of Rates.

- (iv). The objections raised by the CHPT are not at all relevant to the issue under consideration. This Authority is empowered to prescribe the Scale of Rates and Statement of Conditionalities relating to services rendered by the major ports. The CHPT's Scale of Rates prescribing anything contrary to the provision now to be introduced by this Authority stands automatically superseded when the revised provision is introduced. An existing provision in the Scale of Rates cannot be a deciding factor for not introducing any change.

The CHPT has also referred to Section 51 of the Major Port Trusts Act. Section 51 *ibid* empowers this Authority to allow concessional rates in case of coastal goods. There is nothing mentioned in this Section about coastal vessels; and, therefore, the proposed provision is not violative of the provisions of the Act.

It is to be recognised that the proposed amendment is not for providing any (new) concession in tariffs to coastal vessels. The intention is to define classification of the vessel for the purpose of levying notified charges in the Scale of Rates. All that is proposed to be introduced is to require the ports to follow the classification made by the competent authority; and, not to link nature of cargo for levying vessel-related charges.

- (v). The NMPT has referred to some provisions in the Indian Ports Act, 1908. Part-II of the First Schedule of the Indian Ports Act refers to levy of Port Dues at ports in West Bengal (other than major ports), if any. The reference of the NMPT is, therefore, totally out of context.
- (vi). The VPT has pointed out that the origin of cargo must be the basis for deciding the status of the vessel as foreign-going or coastal. This issue has already been settled in the Mercator Lines case relating to the Kolkata Port Trust. The VPT has not given any further arguments to rebut this Authority's prescription

about going by the status of the vessel for the purpose of levying vessel-related charges.

- (vii). The KPT has referred to this Authority's Order dated 2 June 1998 where a reference was made to the 'coastal cargo'. The KPT has mentioned that this Order of the TAMP is to encourage coastal trade and hence coastal cargo is relevant. It has already been clarified by this Authority in its Order relating to the Mercator Lines case that the reference of loading and unloading of the cargo was made in its Order of 2 June 1998 to specify the process of giving effect to the Conversion Order / License in respect of foreign-going vessels. In other words, as already stated in that Order, the cargo loading and unloading aspect shall be seen as a 'conversion factor' and not as a 'characteristic feature' of the status of the vessel. That being so, there is need to take the prescriptions made in that Order to be contradictory to the provision proposed to be introduced now.

In any case, this issue has already been considered in the general revision case of the KPT decided recently and the proposed provision has already been inserted in the Scale of Rates of the KPT.

- (viii). While agreeing to the proposed provision, the TPT has requested to clarify the applicable rates in respect of vessels converting their status at the port. It had already been clarified, in response to doubts raised by different ports, that the corresponding rates should be applied depending on the status of the vessel at the time of the incidence of such charge.

Port Dues being an entry fee is to be realised as per the status of the vessel at the time of entry. If the status of the vessel is changed during its stay in the port, then, 50% of the pilotage fee for inward and outward leg of the vessel depending upon the status of the vessel at each leg can be levied. Berth hire for the period of 8 hours in which the vessel changes its status can be charged on the basis of the status of the vessel at the beginning of the relevant block of 8-hour period.

- (ix). The TPT has also requested to describe certification of the vessel clearly. The Chennai Steamer Agents' Association (CSAA) has suggested to specifically mention the certification by the Customs authorities or the Director General of Shipping as relevant. The suggestion of the CSAA is for removing any ambiguity in applying the provisions. This Authority is, therefore, inclined to accept the suggestion

made by the CSAA.

- (x). The CSAA and the IOCL have demanded that the proposed provision shall be introduced retrospectively since it is only an elaboration of the principles already settled in this Authority's Order dated 2 June 1998. As has already been mentioned, the Order of 2 June 1998 is to specify the process of giving effect to Conversion Order / License in respect of foreign-going vessels. All such cases falling within the purview of that Order are to be dealt with in accordance with the prescription made therein. The proposed provision is a general prescription to indicate the classification of vessels for the purpose of levying vessel-related charges. This provision is proposed to be introduced in the light of different practices adopted by the major ports for such classification and, more precisely, to require them not to link the nature of cargo or its origin with the status of the vessel.

The Orders of this Authority ordinarily take prospective effect. Even though this Authority can make retrospective amendments to the Scales of Rates of the major ports, such an action is taken only in exceptional cases. The case in reference does not throw up any exceptional circumstances. That being so, this Authority finds it reasonable to introduce the proposed provision with a prospective effect.

- (xi). The existing Scales of Rates of the major ports may contain provisions contrary to the one which is proposed to be introduced now. It will be a time-consuming exercise to review all the conditionalities in the Scales of Rates of all the major ports before introducing the proposed provision. Such a review will be undertaken at the time of the next general revision of the respective Scales of Rates. In this backdrop, it is clarified that the proposed provision is absolute and it supersedes any other provision(s) in the Scale of Rates contradicting it.
- (xii). The proposed provision, being a conditionality relating to vessel-related charges, will come into effect on expiry of 30 days from the date of its notification in the Gazette of India. This position will not hold good in the cases of the KOPT, MBPT, and the KPT where this provision has already been ordered to be implemented. Notwithstanding a formal inclusion of this provision now in the Scales of Rates of these ports, it will be deemed to have come into operation at these ports retrospectively from the effective dates of the specific Orders passed in their cases ordering implementation of this arrangement.

5.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority introduces the following conditionality in the Scales of Rates of all the major ports:

“The status of the vessel, as borne out by its certification by the Customs or the Director General of Shipping, shall be the deciding factor for its classification as ‘coastal’ or ‘foreign-going’ for the purpose of levy of vessel-related charges; and, the nature of cargo or its origin will not be of any relevance for this purpose.”

5.2. All the major ports are directed to include the above provision in their Scales of Rates appropriately.

6. This Order will come into effect as explained in paragraph 4 (xii) above.

(S. Sathyam)

Chairman

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