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 representation of M/s. Haldia Petrochemicals Limited (HPL) for a review of on-board and wharfage charges for Benzene levied at the Haldia Dock Complex of the Kolkata Port Trust as in the Order appended hereto.

M/s. Haldia Petrochemicals Limited - - - - Applicant
V/s.
The Kolkata Port Trust - - - - Respondent

ORDER
(Passed on this 12th day of August 2002)

This case relates to a representation received from M/s. Haldia Petrochemicals Limited (HPL) for a review of on-board and wharfage charges for Benzene levied at the Haldia Dock Complex (HDC).

2.1. The Scale of Rates (SOR) of the Kolkata Port Trust (KOPT) was last revised by this Authority vide Order dated 28 March 2001, which was notified in the Gazette of India on 4 April 2001. In the said Order, the on-board and wharfage charges of Naphtha N-Hexane, Butadine, and Butane were uniformly reduced from Rs. 175/- pmt.
to Rs. 110/- pmt. as proposed by the KOPT and no increase in the on-board and wharfage charges was approved for POL products having flash point less than 230°C.

2.2. The HPL has made the following points in its representation:

(i). At the general revision of the SOR of the KOPT, the revised notified charges were not reduced for Benzene, which is also a chemical like Naptha, N-Hexane, etc. and falls under Hazardous-I cargo category with a flash point of - 230°C. At that time it had also not commenced the exports of Benzene.

(ii). There is a certain degree of commonality in the Customs classification of N-Hexane, Butane-I and Benzene as indicated below; and hence, the apparent disparity calls for correction:

<table>
<thead>
<tr>
<th>Customs Classification</th>
<th>Chapter Heading</th>
<th>Item</th>
<th>Basic Customs Duty</th>
</tr>
</thead>
<tbody>
<tr>
<td>2710.00</td>
<td>27.10</td>
<td>Naphtha</td>
<td>10%</td>
</tr>
<tr>
<td>2711.14</td>
<td>27.11</td>
<td>Butadine</td>
<td>10%</td>
</tr>
<tr>
<td>2901.10</td>
<td>29.01</td>
<td>N-Hexane</td>
<td>15%</td>
</tr>
<tr>
<td>2901.23</td>
<td>29.01</td>
<td>Butene-1</td>
<td>15%</td>
</tr>
<tr>
<td>2902.20</td>
<td>29.02</td>
<td>Benzene</td>
<td>15%</td>
</tr>
</tbody>
</table>

(iii). The on-board charges of Benzene at the KOPT are very high if compared to the other ports on the west coast as indicated below:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Port Trust</th>
<th>Rate pmt. (in Rupees)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>KOPT</td>
<td>175 plus 10% SC</td>
</tr>
<tr>
<td>2</td>
<td>MBPT (Pir Pau)</td>
<td>88</td>
</tr>
<tr>
<td>3</td>
<td>COPT</td>
<td>65 plus 5% SC</td>
</tr>
<tr>
<td>4</td>
<td>KPT</td>
<td>35</td>
</tr>
<tr>
<td>5</td>
<td>Adani Ports Ltd., Mundra</td>
<td>50</td>
</tr>
</tbody>
</table>
(iv). It is currently exporting around 30000 TPA of Benzene through Budge-Budge. Since this entails additional logistics problems and road transportation costs, it is interested in routing these exports through the HDC henceforth.

(v). The export cargo will be loaded through pipelines from its complex to the vessel berthed at the oil jetty (HOJ-1) and will not be exposed to the elements consequently minimising the risks and hazards of transportation and adding extra volumes to the HDC.

(vi). To make Benzene exports more competitive, reduction in the on-board charges for Benzene at the HDC is required.

2.3. In this backdrop, the HPL has requested this Authority to reduce the on-board and wharfage charges of Benzene at the HDC in line with other similar products such as Naphtha, Butene-1 and N-Hexane.

3.1. In accordance with the procedure prescribed, a copy of the representation was forwarded to various concerned representative bodies of port users and the KOPT for comments.

3.2. Despite a reminder, the Calcutta Chamber of Commerce and Industry, the Bengal Chamber of Commerce and Industry and the Kolkata Port Trust did not furnish any comments.

4. A joint hearing in this case was held on 24 May 2002 at the KOPT premises in Kolkata. At the joint hearing, the following submissions were made:

   **Haldia Petrochemicals Limited (HPL)**

   (i). The rate for Benzene is very high. Compared to the West Coast rates, it is prohibitive.

   (ii). We had requested at the time of general revision also. At that time it was not considered because Benzene was not handled then. It is now moving. Please consider.
(iii). The volume of traffic is so high that the port will make up more revenue overall.

(iv). The rates in other ports are very low. Because of the high rate, our export is becoming uncompetitive. The rate should be around Rs. 35 to Rs. 50.

(v). The volume of traffic of Benzene at the West Coast ports is much less. Still, they charge less.

Kolkata Port Trust (KoPT)

(i). Benzene is recently started. It is too early to revise. It is at par with class-I chemicals rate at the JNPT.

(ii). Our expenditure is increasing; but traffic is not increasing. We cannot give any reductions now.

(iii). Maybe, the west coast ports are able to offer cheaper rates because of volume of traffic.

(iv). One year from now we will come up with a general revision proposal. At that time we can consider such basic changes.

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

(i). The pre-revised Scale of Rates of the KoPT prescribed an on-board and wharfage rate of Rs.175/- pmt for POL products having a flash point less than 23°C. At the time of the last general revision (April 2001), this rate was not revised upwards. In fact, the KoPT proposed a reduction in this rate for specific products like Naphtha, N-Hexane, Butadine and Butane. This means, the other POL products have been allowed to continue with the on-board and wharfage charges fixed in the year 1996.

(ii). As per the information furnished by the HPL, Benzene is a POL product having a flash point less than 23°C; and, the KoPT Scale of Rates contains specific on-board and wharfage rates for all POL products
having flash points less than $23^\circ$C. That being so, there is no ambiguity in realising on-board and wharfage charges on Benzene.

(iii). The representation of the HPL is that no reduction was allowed in the rates for Benzene at the time of the last general revision. In its own admission, the commodity was not handled then. That being so, the question of considering a non-existent commodity for reduction of rate could not have arisen then. It is noteworthy that the KOPT, based on its commercial considerations, identified specific POL products for proposing reduction in the on-board and wharfage charges. Viewed in this prospective, there does not appear to be any mistake committed by not considering Benzene under the POL product category which received a special treatment at the time of the last general revision.

(iv). The HPL has relied on the Customs classification to demand that the apparent disparity must be corrected. Prima facie, the classification of Naphtha and Butadine does appear to be different from the one made for N-Hexane, Butene-1 and Benzene. Be that as it may, reference to the Customs classification is relevant only in the context of a Port’s action to levy wharfage on a commodity by classifying it under ‘unspecified category’. In the case of Benzene, as has already been mentioned, there is a specific on-board and wharfage rate available in the SOR, which is being applied by the KOPT.

It has already been clarified by this Authority in many cases that a Port Trust can adopt the customs harmonized system of nomenclature for purposes of classification of cargo; but, it can always have a set of tariffs relevant to its position. That being so, the facts that N-Hexane, etc. and Benzene fall under the same customs classification and carry the same rate of duty cannot deter a Port Trust from levying different wharfage rates thereon. If such a position obtains in a port’s SOR, it cannot be called a disparity requiring correction.

(v). It is the stated view of this Authority that the norms, principles and approaches relating to tariff setting must be uniform across all the major ports; but, the rates need not (and, cannot) be the same at all the major ports. Since the tariffs levied at the KOPT are with reference to its cost of operations and
investments in relevant facilities, it will not serve any fruitful purpose by comparing them with those of other ports.

(vi). The HPL has claimed that it presently handles Benzene at Budge Budge and incurs logistic problems and additional handling costs. It is noteworthy that the wharfage rate at Budge Budge is also the same as at the HDC. By handling Benzene at the HDC, the HPL may avoid certain additional costs presently being incurred which is a direct benefit to it. As far as the KOPT is concerned, it is only a shift of traffic from one place of its operations to another.

(vii). Analysis of the financial position of the KOPT at the time of the last general revision revealed the precarious financial health of the Port and highlighted the burden saddled on the HDC to cross-subsidise the operations at the KDS. Given this financial position, there is no scope for reducing the existing tariffs at the KOPT. It is relevant here to recall that in recognition of this position also, this Authority was constrained not to approve a KOPT proposal made a year ago for reduction of some of its vessel-related charges.

(viii). The existing SOR of the KOPT was notified in April 2001 with a usual tariff validity cycle of two years. This Authority generally does not view with favour demands for midway piece-meal tinkering with the Scale of Rates unless some extraordinary circumstances arise warranting exceptional consideration. In this case, there does not appear any such extraordinary circumstance in prevalence.

It is noteworthy that the KOPT has assured to consider the issue agitated by the HPL at the time of formulating its proposal for the next general revision/review of Scale of Rates. It is a reasonable stand taken by the KOPT. While reviewing the on-board and wharfage charges levied on Benzene, the KOPT is advised to consider introduction of a volume discount scheme for POL products. It is noteworthy that the KOPT itself had proposed, in its last general revision of tariffs, introduction of volume discount schemes for crude oil, coal, fertilizers, containers, etc.

6. In the result, and for the reasons given above, and based on a collective application of mind, this Authority does not find any force in the representation of M/s Haldia Petrochemicals Ltd., to cause a revision at this
stage of the on-board and wharfage charges for Benzene; and hence, rejects it.

(S. Sathyam)
Chairman