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Tariff Authority for Major Ports

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 representation of M/s. Sea Port Services Private Limited for refund of additional port dues and pilotage charges collected by the Kolkata Port Trust as in the Order appended hereto.

( S. Sathyam )
Chairman

M/s. Sea Port Services Private 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. Sea Port Services Private Limited (SPSPL) for refund of additional port dues and pilotage charges collected by the Kolkata Port Trust (KOPT).

2.1. The SPSPL has made the following points in its representation:
(i). The vessel ‘M.T. CHEMSHION’ during her voyage (Imp Rot No.223/2000) called first at Haldia port on 28 April 2000 and thereafter at Kolkata port on 2 May 2000 in the same trip/voyage; and, declaration to the Port and the Customs was made accordingly.

(ii). As per the existing Scale of Rates (SOR), Pilotage is paid once for a ship’s calling at Haldia and again for Budge Budge/Kolkata Port.

Prior to the year 1995, a vessel called at the Pilot Station could return to her anchorage subject to change of acceptance, without incurring Pilotage charges. Now, since the Pilot Station has shifted to Saugar roads, every inward vessel which picks up a Pilot must compulsory proceed to Saugar anchorage before returning to Outer anchorage incurring pilotage for each direction.

(iii). In case of shifting between Haldia and Budge Budge/Kolkata, the Pilot is allotted for such shifting only after the acceptance at the destination point is given.

(iv). In the case of M.T. Chemshion, the pilot was booked for shifting the vessel from Haldia to Budge Budge when the vessel was accepted at the Budge Budge; however, on reaching Saugar Roads, her acceptance was withdrawn as there was insufficient holding area at Saugar Roads. The vessel had to proceed to the Outer Anchorage to wait for her acceptance at the Budge Budge. The following day the vessel, once again accepted at the Budge Budge and arrived there on 1 May 2000 and sailed out down the river on 2 May 2000.

(v). It had not made any requisition for the movement between the Saugar and the Outer Anchorage and back to Saugar. This was done due to the Port’s internal constraints.

(vi). Even though due to Port constraints an extra pilotage charge has been levied, no refund can be made by the KOPT because such clauses giving relief are not provided in the KOPT SOR.

(vii). In spite of the repeated requests for refund of the amount charged for this movement of the vessel, the KOPT has not responded.
2.2. In this backdrop, the SPSPL has requested this Authority to order relief.

3.1. A copy of the representation was forwarded to the KOPT for comments. After 5 reminders, the KOPT submitted its comments. On receipt of response from the KOPT, the representation of the SPSPL was registered as a ‘case’.

3.2. The points made by the KOPT are summarised below:

(i). The vessel sailed from the HDC on 29 April 2000 for Budge-Budge; but, was too late to be berthed at the Budge Budge on that same day. Since the Saugar Roads had insufficient holding area, it had to proceed to outer anchorage.

(ii). She was the third Budge Budge vessel on 30 April 2000 and, no inward Pilot could be booked for her. On 1 May 2000, no inward boating could be done due to breakdown on the VTMS. Finally on 2 May 2000 she picked up Pilot and proceeded to the Budge Budge.

(iii). As she dropped her Pilot enroute Budge Budge from the HDC and went to outer anchorage, she was charged double pilotage – one for Sandhead-Haldia-Sandhead and another for Sandhead-Budge Budge-Sandhead.

(iv). The Steamer Agent did not ask for shifting for the vessel from the HDC to Budge Budge via outer anchorage, but, as there is no provision in the existing SOR for giving remission/waiver of port dues and pilotage charges for shifting to Saugar Road/Sandhead, no waiver of the same could be allowed.

(v). In order to avoid recurrence of these kinds of cases, it has been made a practice to sail vessels from the HDC to the Budge Budge/Kolkata only after receipt of confirmation of acceptance, but there are occasions when after sailing out from the HDC on getting confirmed acceptance from Budge Budge/Kolkata, the vessel has to be held back due to cancellation of such confirmation. In those cases,
the vessels often have to proceed to Sandhead for containment problems at Saugar roads; and, double pilotage and port dues are being charged in absence of any clear cut provision in the existing SOR for concession/waiver of the same.

(vi). This Authority may consider the matter and issue guidelines to be followed in such cases. The case of M.T. Chemshion may also be dealt under the same guidelines.

4.1. In accordance with the procedure prescribed, a copy each of the representation and the comments of the KOPT thereon was sent to concerned port users/representative bodies of port users for comments. The comments received from them are summarised below:

**Association of Shipping Interests in Calcutta (ASIC)**

(i). The KOPT has accepted that double Pilotage charges & Port dues have been collected from the SPSPL. Since the double charge involved is not due to any fault of the vessel/vessel’s Agent, but was collected due to Port’s own constraints, the additional charges so collected shall be refunded to the concerned party.

(ii). The Shipping Agent has not sought any waiver, concession or remission of the charges; but, has requested for refund of additional Pilotage and Port dues, not attributable to the vessel. The KOPT Administration has powers under Section 55 of Major Port Trust Act, 1963 for making such refunds.

**Shipping Corporation of India Limited (SCI)**

(i). The request of the SPSPL is justified as the additional movement was undertaken by the Port themselves and not at the behest of the Line. The KOPT may be directed to refund the appropriate amount to the SPSPL.

**Container Shipping Lines Association (India) (CSLA)**
(i). While the KOPT has stated that the vessel was late to be berthed at the Budge Budge, it does not seem correct that an operator be held liable for costs arising as a result of exceptional port requirements. Once the operator has paid for a service, if a port then requires additional work or operations for their own reasons, then the port shall absorb such costs and not attempt to pass them on. The ports cannot defend their position on the ground that the tariff does not allow a refund, which seems uncommercial. Such practices do not apply in other ports.

(ii). The Port of Kolkata is struggling to retain business. Such restrictions need be removed and the ports shall take a more commercial approach in their dealings with the customers.

(iii). On the assumption that there are no other considerations that shall be taken into account, the case of the SPSPL appears to be just and has our support.

**Bengal Chamber of Commerce and Industry (BCCI)**

(i). The KOPT, on technical grounds, must refund the excess Pilotage collected from the users, as the “extra move” was carried out at the option of the KOPT and not at the request of the user.

**Calcutta Chamber of Commerce (CCC)**

(i). The Port dues and pilotage charges collected by the KOPT shall be remunerative as well as competitive. If the charges collected by the KOPT are above the reasonable limit, the charges shall be refunded to the party concerned.

4.2. A copy each of the above comments was sent to the KOPT and the SPSPL as feedback information.

5. The KOPT has furnished its observations on the comments of the users, which are summarised below:

**On the Comments of the ASIC and the SCI**
(i). The additional Pilotage & Towage charges and Port Dues could have been waived by applying Section 53 of the MPT Act 1963 in the instant case; however, as this kind of incident might happen in future also, it was thought to prescribe a specific clause under the relevant section of the SOR regarding charges, if any, to be levied for the additional movement of the vessels on KOPT account, instead of taking the matter repeatedly to the Board of Trustees for waiver.

6. A joint hearing in this case was held on 7 January 2002 at the KOPT premises in Kolkata. At the joint hearing, the following submissions were made:

M/s. Sea Port Services Private Limited (SPSPL)

(i). There was a return to Sandhead. But, that was on Port's considerations.

(ii). We had entered the Port. The Customs also gave a certificate accordingly.

(iii). We were booked to go to Budge Budge; the Budge Budge accepted us, how can we be held responsible for subsequent delay?

Association of Shipping Interests in Calcutta (ASIC)

(i). This is a case of wrong billing. They must refund.

(ii). Port Dues and Pilotage, both must be refunded.

(iii). Incorporate a provision in the SOR to cover such cases.

Kolkata Port Trust (KOPT)

(i). There was no wrong intention. The problem was caused by tidal changes.
(ii). The KOPT has accepted the reasonableness of the representation. The vessel had not left the port limits, we have, therefore decided to waive the second levy of Port Dues.

(iii). What happened was beyond the control of everyone. The operator was not responsible also; but, there is no provision in the SOR to cover such cases. We have, therefore, decided to go to the Board for ‘waiver’.

Since these kinds of incidences may or may not happen, it will be better if TAMP gives an order for common application.

(iv). We will discuss with the vessel related interests and by 7 February 2002 suggest an agreed formulation for TAMP’s consideration.

7.1. As agreed in the joint hearing, the KOPT was requested to forward an agreed formulation for consideration by this Authority for inclusion in the SOR by 7 February 2002. The KOPT requested for extension of time upto 7 March 2002, giving reason that due to delay in vetting of the matter by the ASIC, the matter could not be placed before the meeting of the Board of Trustees in February.

7.2. Further extension upto 7 May 2002 was sought by the KOPT on the grounds that the proposal placed in the meeting of Board of Trustees held in March 2002 had to be withdrawn for want of some more information.

7.3. The KOPT intimated that no meeting of the Board of Trustees could be held after 6 March 2002 as the tenure of the previous Board expired on 31 March 2002. The first meeting of the reconstituted Board was held on 30 May 2002. The proposal was placed in the meeting for consideration and the proceedings would be intimated separately to this Authority.

8. The KOPT has finally responded on 24 June 2002 on the issue under consideration. The points made by the KOPT are summarised below:
(i). The Board of Trustees resolved to sanction waiver of Rs. 53895/- levied as excess pilotage fee on the vessel by applying Section 53 of the MPT Act 1963. Accordingly, Rs. 53985/- is being refunded to the SPSPL.

(ii). In order to avoid recurrence of this kind of cases in future, the Board of Trustees have resolved to incorporate the following clause in the existing SOR of the KOPT subject to the approval of the TAMP:

“Section-28.8(A) – No additional pilotage charge shall be levied by the KOPT where a vessel has to undertake any additional pilotage due to failure or deficiency directly attributable to the port. However, if such additional pilotage is undertaken for any other cause on which the KOPT has/had no direct control including circumstances such as natural calamities, war, or any other natural problems, no such exemption shall be granted.”

(iii). Since the vessel did not actually go out of the conservancy limit of the port, the second set of port dues should not have been levied; and, hence, the additional port dues already levied are being refunded to the SPSPL.

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

(i). It is a clear case where a vessel has been made to pay additional pilotage charges due to an operational procedure introduced and navigational problems faced by the Port. As has been argued by the Applicant, the vessel did not request for shifting to outer anchorage; it was compelled to go there.

(ii). As regards levy of a second set of port dues, it is a case of wrong billing. The vessel had waited only at the outer anchorage but did not leave the Port limits.

(iii). Even though its response was delayed for varying reasons, it goes to the credit of the KOPT to admit the mistake in its action in a forthright manner and request for an explicit conditionality in its Scale of Rates to deal with this type of cases. Incidentally, in the consultation process before revision of the SOR
of the KOPT in April 2001, none of the user organisations have also highlighted the issue at consideration now, even though the cause of action relating to MT Chemshion had arisen during April 2000.

(iv). The KOPT has now informed that wrong billing for the second set of Port dues is being rectified and charges already collected are being refunded to the Applicant. The Board of Trustees of the KOPT has also decided to waive the additional pilotage charges levied on the Applicant. With these actions of the KOPT, the grievances raised by the Applicant get automatically redressed.

(v). The KOPT has proposed an amendment in its Scale of Rates by including a conditionality stipulating that additional pilotage charge will not be levied when a vessel is to undertake additional pilotage due to failure or deficiency directly attributable to the Port. The KOPT agreed at the joint hearing to discuss with the concerned users and suggest an agreed formulation. It has not been clearly indicated in the KOPT communication whether the proposed formulation has been drafted in consultation with the users. Nevertheless, the Board of Trustees of the KOPT has endorsed the proposed conditionality. Further, one of the guidelines adopted at the Chennai Workshop (Feb. 1998) is about users not being made responsible for delays caused by the Ports. Extending this guideline to any financial implication arising due to a failure of a Port Trust, it can reasonably be concluded that users will not be made responsible for additional financial implications arising due to any fault directly attributable to a Port Trust. Viewed in this perspective, this Authority is inclined to approve the conditionality proposed by the KOPT.

10.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority disposes of the representation of M/s. Sea Port Service Private Limited as superfluous since the issues agitated by them have now abated in view of the remedial actions already taken by the KOPT.

10.2. The following clause is approved for insertion in the Scale of Rates of the KOPT:

“Section-28.8(A) – No additional pilotage charge shall be levied by the KOPT where a vessel has to undertake any additional pilotage due to failure or deficiency directly attributable to the port. However, if such
additional pilotage is undertaken for any other cause on which the KOPT has/had no direct control including circumstances such as natural calamities, war, or any other natural problems, no such exemption shall be granted.”

10.3. In view of the fact that this is an agreed formulation, it will come into effect immediately on its notification in the Gazette of India.

(S. Sathyam)

Chairman

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