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 Association of Shipping Interests in Calcutta about levy of mooring/anchorage charges at the Haldia Dock Complex of the Kolkata Port Trust as in the Order appended hereto.

( S. Sathyam )
Chairman

Association of Shipping Interest in Calcutta - - - - Applicant

V/s.

Kolkata Port Trust - - - - Respondent

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

This case relates to a representation received from the Association of Shipping Interests in Calcutta (ASIC) about levy of mooring/anchorage charges at the Haldia Dock Complex (HDC) of the Kolkata Port Trust
2.1. The KOPT levies mooring/anchorage charges on ships using the lock barrel at the HDC in addition to the Berth Hire chargeable under para 23.1 of the Scale of Rates (SOR) of the Kolkata Port Trust (KOPT).

2.2. Since a vessel only passes through the lock gate without being moored/anchored for any length of time, the ASIC has contended that the levy of mooring/anchorage charge has no justification. The mooring/anchorage charges are levied as per Section 24.1 of the SOR of the KOPT.

2.3. In this backdrop, the ASIC has requested this Authority to advise the KOPT

   (i) to stop charging mooring/anchorage charges for lock barrel when the vessels have not been actually moored/anchored; and,

   (ii) to refund the additional monies so charged so far.

3.1. In accordance with the procedure prescribed, a copy of the representation was forwarded to various concerned port users / representative bodies of port users and the HDC for comments. The comments received from them are summarised below:

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

(i). The point raised by the ASIC is quite legitimate and definitely needs to be considered.

(ii). The levy of mooring charges at the HDC is not justified and hence, the tariff item 24.1 shall be suitably amended so as not to burden the Lines unnecessarily.

**Container Shipping Lines Association (CSLA)**

(i). If a vessel does not moor/anchor, it cannot attract a charge for the service not availed. For a similar
operation at the Kolkata Dock System and Mumbai Port Trust, such a charge does not exist. There is no logic and justification for this charge; and, it is the responsibility of the KOPT to take a commercial approach to such issues.

(ii). If it is argued that this revenue is needed as a part of the overall income stream of the port trust, then presumably there is an element of cross-subsidisation present, which is against the Government policy.

(iii). The charge be abolished and the refund for the charges shall be made retrospectively. This must be clarified to all the port trusts to not to levy the charges in all such cases where no actual service is rendered.

Kolkata Port Trust (KOPT)

(i). The mooring / anchorage charge, embodied in the SOR under Section 24.1 specifically indicates “When a vessels is moored / anchored at dock buoy / river mooring or any other mooring / anchorage in the CDS / HDC or Lock Barrel at the HDC, charge at the following rates shall be leviable”. The provision, thus, leaves no doubt regarding levy of this charge.

(ii). Every vessels has to stay at the Lock Barrel at the HDC while passing through the lock for a certain period of time, moored with the Bollards / Capstans / Bits; and, the stay time at the lock varies from about 45 minutes to over 5 hours.

(iii). A vessel has to be moored/anchored at the Lock Barrel. The term ‘moor’ has not been defined in the Merchant Shipping Act 1958, the Indian Port Act 1908 or the Major Port Trust 1963.

    The Oxford and Merriam Websters’ Collegiate Dictionary defines the term ‘moor’ as “attach (boat etc.) to fixed object” and “to make fast with or as if with cables, lines or anchors” respectively.

(iv). The ASIC, had not raised any objection to this provision of levying mooring/anchorage charges
at the Lock Barrel at the HDC at the time the proposed SOR was circulated to the port users/representative bodies of port users (including ASIC) for comments. The mooring/anchorage charges are thus being levied correctly for the vessels stay at the lock entrance.

3.2. A copy each of the comments received form the above users was forwarded to the ASIC and the HDC as feed-back information.

3.3. Despite two reminders, the Indian National Shipowners’ Association has not furnished any comments.

4. The ASIC has responded to the comments furnished by the HDC on its representation. The points made by it are summarised below:

(i). Passing through the Lock Barrel is an inseparable part of inward and outward navigation of the vessels to and fro the HDC. Stay of the vessels at any length of time during passage through the Lock Barrel does not tantamount to and shall not be confused and mixed with the mooring/anchoring of the vessels.

The provision for the mooring/anchorage charges in the KOPT tariff, hence, has no relation or relevance with the vessels’ stay at the HDC lock entrance during the inward/outward movement of the vessel.

(ii). As per the data supplied by HDC on the stay of the vessels at the Lock Barrel, the average stay of a vessel for inward navigation and for outward movement is indicated as 100 minutes and 138 minutes respectively. This short stay cannot be categorised as mooring/anchoring of the vessels.

5. The KOPT has responded to the comments furnished by the port users on the representation of the ASIC. The points made by the KOPT are summarised below:

On the comments of the SCI

(i). The SCI has prayed for an amendment in the tariff item 24.1 of the SOR; and hence, has not prima-facie
disputed the correctness of the levy of mooring/anchorage charge by the HDC as per the existing SOR.

On the comments of the CSLA

(i). The charge is levied since a vessel receives the services of mooring/anchoring at the Lock Barrel at the HDC.

(ii). As regards non-levy of the said charge at the MBPT, no comments are offered. All the ports have their own SORs and the rate of charges varies from one port to another. Non-levy of one charge by the one port does not mean that no other port can levy the same.

(iii). The HDC has not argued that this revenue is required as a part of its overall income but in fact has proposed to levy this charge to recover the substantial Capital / Revenue expenditure incurred on the lock entrance. In fact, if the charge is not levied, there will be a cross-subsidisation and not otherwise.

(iv). The TAMP has been given the powers to accept/reject any specific levy proposed by the port trust, which becomes statutory when published in the Official Gazette. The meaning of the word ‘commercial approach’ referred to by the CSLA is, therefore, not understood.

6. 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:

Association of Shipping Interests in Calcutta (ASIC)

(i). We have explained the details in our petition.

(ii). Vessels have to pass through lock gates; they are required to stay there for a while. How can there be a charge for that?

(iii). ‘Pilotage’ is same in the CDS and HDC. There are ‘dock pilots’ and ‘river pilots’. ‘Dock Master’ only
takes charge of berthing.

(iv). (a). We have been protesting for 2 years or more. We had protested verbally earlier also.

(b). Even if we had not protested earlier, why can we not do so now? A ‘wrong’ can be corrected at any time.

Kolkata Port Trust (KOPT)

(i). A vessel may be tied in the lock gate waiting for high tide. It is deemed to be moored there.

(ii). This is not a new charge. It has been there, duly notified, for many years. How can they question now?

(iii). ‘Pilotage’ is only upto the lock gate; not upto the berth.

(iv). We are providing services and charging for it. It is ridiculous to say that the lock gate charge is unjustified.

(v). (a). We are not doing the lock gate operation for our purpose. Everything is for the users’ purpose. What happens in the CDS is not relevant. Our costing and our rates are different.

(b). The CDS lock system is very old. They may not be charging for that now. Ours is a new system. We have to recover our costs.

The Shipping Corporation of India Limited (SCI)

(i). The SOR contains identical description in CDS and HDC. The nomenclature is same. How can they charge differently? Let them change the SOR first.

The Container Shipping Lines Association (CSLA)
(i). We agree with the ASIC. All the costs are covered by ‘pilotage’. There cannot be an additional ‘mooring’ charge.

(ii). Wherever there are lock gates, this operation takes place. There is no separate charge for it.

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

(i). The notified Scale of Rates of the KOPT provides for levy of 50% of berth hire when a vessel is moored / anchored at the lock barrel of the HDC. Levy of this charge as per the notified rates cannot be termed as a wrong application of the Scale of Rates. That being so, the charges realised so far cannot be held to be unauthorised; and, therefore, the demand of the ASIC for a refund of the charges realised so far does not merit consideration.

(ii). As has been pointed out by the HDC, the issue for consideration is whether the Scale of Rates relating to this charge is to be amended immediately with prospective effect.

(iii). This Authority generally discourages linking a fee for a service / facility with the charge for some other service / facility. Seen in isolation and bearing in mind the fact that almost all vessels entering the Haldia dock have to use the lock twice – both during inward and outward movement – levying a charge equivalent to 50% of berth hire does appear to be on the higher side with reference to the possible expenditure on lock gates operations. In the absence of specific costing details available, this observation is based on judgment only.

Even though the position in isolation depicts a different picture, it is recognised that the existing tariffs have been fixed considering the overall position under the vessel-related activities. This means, a surplus available in one service goes to offset, at least partly, the deficit shown by some other services.

(iv). The charge for using the lock barrel has been in existence for a long time in the Scale of Rates of the
KOPT. As has been correctly pointed out by the KOPT, its proposal for (the last) general revision of the Scale of Rates included continuance of this levy; and, none of the user organisations consulted in that proceeding had raised any objection to that. That being so, admittedly, this item of charge was allowed to continue without any detailed scrutiny and its effect on revenue estimates was also duly considered in the relevant cost statements.

The argument of the ASIC that a ‘wrong’ must be open to correction at any time is unexceptionable. At the same time, it has to be recognised that adjustments / withdrawal of existing tariff items will have revenue implications; and, a suitable comprehensive revenue model can be conveniently determined at the time of a general review of the Scale of Rates.

(v). Considering the frequent incidence of this charge, the revenue implication will be of a high order, if any alteration in this charge is made. If such an alteration is effected now, it will become inevitable to adjust the other vessel-related charges applicable at the Haldia to off-set the possible revenue loss. This will call for a mini general revision of the Scale of Rates. Even if such an onerous task is undertaken ahead of the schedule, it will not end in any fruitful result from the point of view of a vessel. In order to maintain the financing model already allowed to the KOPT, any alteration in this charge will have to be revenue neutral which means the vessels will pay higher charges for some other services / facilities in lieu of not paying separately for the passage through the lock.

Notwithstanding this position, this Authority would unhesitantly order an ahead-of-schedule revision, if any serious errors or wrong application of principles is established. In view of the position explained above, the only question emerges in this case is whether this charge has to continue as a separate item of tariff or whether it has to be bundled alongwith some other relevant tariff items. This issue can be conveniently settled at the time of the next general revision / review of the Scale of Rates. Till such time, this Authority finds it appropriate to allow the existing tariff arrangement to continue.

(vi). The argument of the KOPT that pilotage is only upto the lock gate is misplaced and is not in conformity with the general position obtaining elsewhere. Pilotage is seen to be an activity of bringing a ship from outer anchorage point to the place of berthing and vice – versa. Just because two sets of personnel of
the KOPT are engaged in this activity, i.e., river pilots and dock pilots, the basic scope of the service cannot be altered. As far as the case in reference is concerned, as has been mentioned earlier, the charge for lock barrel has been taken as a separate item of tariff for revenue estimation; and has not been included in the pilotage fees.

(vii). There have been references about the absence of this tariff item at the MBPT and even at the KDS, which is another arm of the KOPT. As pointed out by the KOPT, the cost structure of the HDC considered at the time of the last general revision of the Scale of Rates of the KOPT recognised this charge as a separate item of revenue, which is not the case at the MBPT or the CDS.

While there is definitely a need to rationalise various charges levied at the major ports, absence of a separate tariff item at one port cannot render existence of such charge at another port as inadmissible.

(viii). The issue of merging the cost of rendering services at the lock gate with some other main vessel-related activity requires a careful indepth analysis. If this item is merged with pilotage fee, then all vessels including those, which do not use the lock gate, will be forced to bear the cost of lock gate operations. This may perhaps call for two sets of pilotage fee at the HDC – one for those vessels passing through the lock gates and another for vessels not entering into the dock. Alternatively, it can be merged with the Berth hire charges for those berths situated within the dock.

Composite port charges for various services rendered by a Port have come into being with the acceptance of the recommendations made by the Directing Group in early 80s. Voicing their grievance that such composite charges force them to pay even for the services not availed by them, some of the user organisations have strongly pleaded for unbundling of the composite charges and prescription of itemised tariffs. Even though an immediate decision in this regard may not be possible since the current position obtaining at all the major port trusts is to be extensively analysed, there is prima facie merit in the demand for unbundling. Besides promoting transparency, such an approach will be in line with one of the tariff setting principles of *quid pro quo* emphasised by this Authority. In an era of computer-aided data processing, prescription of itemised tariffs will not pose any serious billing problems.
Be that as it may, the charge for the lock barrel at the KOPT is linked to berth hire charges and is, therefore, being levied on a unit of 8 hours. This means the charge is a function of the vessel’s size (GRT) and time spent at the lock gate. While there will not be any objection to seek higher charges from larger size vessels, the linkage to time spent at the lock barrels is inappropriate. The operations of the lock barrel are performed by the KOPT; and, a vessel at the lock has nothing to do except wait for adjustment of water level or favourable tidal condition to sail out. Viewed in this perspective, it is not relevant to require a vessel to pay this charge based on the time spent by it between the lock gates. It is, therefore, reasonable for the KOPT to have a tariff item for use of lock barrels, which will be a flat per GRT rate for all vessels using this facility.

As has already been mentioned, adjustment of this tariff item can be conveniently done at the time of the next general review/revision of tariffs. The KOPT is advised to formulate its proposal for the next general revision of its Scale of Rates bearing in mind the analysis given above with respect to levying of a charge for use of its lock barrels at the HDC and, in consultation with its users regarding continuance of this charge as a stand alone tariff item or its merger with some other vessel-related activities.

(ix). The existing Scale of Rates prescribes that for the purpose of levying charges for use of lock barrels, the period of 8 hours shall be calculated from the time a vessel is moored / anchored. Likewise, it is stipulated that the 8 hours period will be counted from the time a vessel occupies berth / jetty for the purpose of levying berth hire charges.

Since a vessel moves from the lock barrel to a berth or vice versa, there will always be an overlap of at least one block of 8 hours period.

To avoid double charging for such overlapping period, a conditionality has already been introduced by this Authority in the Scale of Rates of the KOPT [item No. 3(xii)] to stipulate that when a vessel is moved between a berth / dock buoy / river mooring / anchorage, the berth hire or buoy or mooring or anchorage charge will be levied for the 8 hours period covering stay at both the points based on the rate applicable at the beginning of the 8 hour period. This prescription does not explicitly include movements between
lock barrel and a berth. It is not clear whether this provision has been applied by the KOPT for such movements considering lock barrel as a mooring point. None of the users have also agitated this issue. Nevertheless, for promoting greater clarity this Authority considers it necessary to amend prospectively the existing conditionality 3(xii) in the Scale of Rates to include movements between lock barrels and berth / dock buoy/ mooring / anchorage.

8.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority rejects the representation of the ASIC.

8.2. The KOPT is directed to formulate its proposal for the next general revision of its Scale of Rates keeping in mind the analysis given in para 7 (viii) above.

8.3. The existing Section 3(xii) of the Scale of Rates of the KOPT is amended as follows:

"3.(xii). When a vessel is moved between a berth / dock buoy / river mooring / anchorage / lock barrel, the berth hire or buoy or mooring or anchorage or lock barrel charge shall be levied for the 8 hour period covering stay at both the points based on the rate applicable at the beginning of the 8 hour period".

9. This amendment to the Scale of Rates of the KOPT will come into effect immediately on its notification in the Gazette of India.

( S. Sathyam )
Chairman

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