

No. 142

New Delhi, the 4th June, 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 modifies its Order dated 4 February 2000 relating to fixation of penal interest on delayed payments by the users and delayed refunds by the Port Trust, as in the Order appended hereto.

( S. Sathyam )

Chairman

**Tariff Authority for Major Ports**

**Case No. TAMP/8/2000-Genl.**

**ORDER**

(Passed on this 16th day of May 2001)

This Authority had passed an Order on 4 February 2000 relating to imposition of 24% penal 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.

1.2. In the said Order, this Authority decided the following:

- (i). The users shall pay penal interest @ 24% per annum on delayed payments.
- (ii). Likewise, the Port Trust shall pay penal interest @ 24% per annum on delayed refunds.
- (iii). The delay in refunds will be counted only 20 days from the date of completion of services or on production of all the documents required from the users, whichever is later.

2.1. In response to the above Order, the Mumbai Port Trust (MBPT) has requested the Authority to withdraw the Order as it is bad in law, without jurisdiction and unsustainable. The MBPT has also threatened that if the Order is not withdrawn within ten days of receipt of its letter dated 13 April 2000, the MBPT will have no option but to file a Writ Petition for quashing of the said Order.

2.2. The objection of the MBPT to the Order dated 4 February 2000 was examined and a reply was sent to the MBPT. The following points were highlighted in the reply:

- (i). The rate of penal interest was not fixed arbitrarily. It was the rate adopted by the Revenue Department for delayed tax payments.
- (ii). It could not be called excessive because the rate was common for both sides.
- (iii). The time limit of 20 days for refunds was reasonable and it could not be said to be impractical at all.

2.3. It was also pointed out to the MBPT that the relevant point in this Authority's reckoning was the uniformity of penal interest payable both ways; and, this Authority would be happy to accept any common rate preferred by the Port Trusts. The position was informed to the MOST also.

3.1. The Calcutta Port Trust (CPT) also submitted a representation against the said Order. In its representation, the CPT pointed out that this Authority's Order dated 4 February 2000 had no legal validity and demanded that the Order must be rescinded / withdrawn with intimation to all the Major Ports.

3.2. The representation of the CPT was considered by the Authority; and, an Order was passed on 19 July 2000 to reject the representation of the CPT as there was no reason to interfere with the Order. However, this Authority made it clear in its Order that whatever was the time limit or the penal rate of interest prescribed, such prescription would uniformly apply to both the sides relevant to any transaction.

4. The MOPT, JNPT and CHPT had submitted representations against the Order. This Authority considered these representations and noted that the interest on delayed income tax payments had been reduced from 24% to 18% per annum. This Authority decided to advise the ports which had represented against the Order and also to other Ports to discuss the subject in the forum of the Indian Ports Association (IPA) for a coordinated view of all the major port trusts to adopt a uniform interest rate which should be applied on delayed payments made by both the port users and delayed refunds by the port trusts.

5. Accordingly, all the Port Trusts were requested to discuss the matter in the forum of the IPA to formulate a coordinated view of all the major port trusts about adoption of uniform interest rate as also the time limit beyond which the penal interest shall be levied on delayed payments made by port users or delayed refunds made by the port trusts.

6. Comments received in this regard from some of the Ports are summarised below: \_

**Mumbai Port Trust (MBPT)**

- (i). Considering that the implementation of the Order would bring in more accountability and responsibility, it has been decided to implement the Order.
- (ii). Levy of interest @ 24% per annum for both sides is very high especially with the market conditions. Presently, interest chargeable on delayed payment to MBPT is @ 18% per annum, which was fixed in 1997. It is felt that interest at 18% per annum is adequate.
- (iii). Order may be amended to provide for levy of interest @ 18% per annum both on delayed payments by the users and delayed refunds by the Port Trust beyond the period of 20 days.

#### **Jawaharlal Nehru Port Trust (JNPT)**

- (i). The Port does not have an adequate debt recovery mechanism in the absence of which it is difficult to recover past debts. Therefore, charging of interest, when the principal payments themselves are not forthcoming would only lead to artificially boosting the Ports profitability.
- (ii). Considering the number of parties involved, additional manpower would be required for billing of the penal interest.
- (iii). It is not practical to adhere to the 20 days limit prescribed by the TAMP with the present manpower at the JNPT.
- (iv). The Port is of the opinion that it may not be practical to implement TAMP's order on penal interest.

#### **Paradip Port Trust (PPT)**

Levy interest @ 24% on delayed payments made by Port Users and delayed refunds made by the Port is acceptable and it is our view to continue with it until the same is revised/amended again by the TAMP.

#### **Mormugao Port Trust (MOPT)**

The Port Trust had discussed with the representative of Port Users and a consensus was reached. The matter was then placed before the Board and following decisions were taken subject to the approval of the TAMP:

- (a). To grant 7 days as grace period from the date of receipt of the bill to the Port Users for settlement of various bills and
- (b). To implement the TAMP's Order with effect from 23 March 2000 for levy of penal interest @ 24%.

#### **Calcutta Port Trust (CPT)**

- (i). The time limit for processing refunds claim by port and for payment of under charge bill etc. by the Port users, may be enhanced to 30 days from 20 days.
- (ii). The penal rate of interest might be lowered to minimum applicable bank rate.

7. In the meanwhile, the CPT has sent another request for keeping the TAMP's Orders dated 4 February 2000 and 19 July 2000 in abeyance pending the decision of the IPA. The CPT was informed that the Orders passed and notified by the Authority in exercise of its statutory powers are binding on the major port trusts unless set aside by a higher judicial forum. The CPT was also advised that if it decided not to implement them, it would only be so at the risk and responsibility of the Port.

8. The IPA in its Governing Body Meeting held on 23 March 2001, discussed the matter. The IPA conveyed its view that each port should have freedom to decide its policy.

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

- (i). The question about the competence of the Authority to prescribe penal interest rate for delayed payment / refund in the Scale of Rates of Major Port Trusts has already been settled by this Authority through its Order dated 19 July 2000 (in respect of the Calcutta Port Trust).
- (ii). There is no merit in the arguments of the JNPT for not implementing the Order citing possible practical difficulties. Because there are some long pending debts and some of which may have even become 'bad', a Port cannot reasonably give up charging penal interest on delayed payments, which is an accepted commercial practice. If the Port applies the penal interest provision for delayed payment from users, the same condition shall be applicable to delayed refunds made by the Port Trusts too. The idea is only to emphasise the principle of level playing ground.
- (iii). The intention behind this Authority's Order dated 4 February 2000 is to prescribe a uniformity of penal interest payable on delayed payments both ways i.e. by port users as well as by the Port Trust. In the Order, this Authority prescribed a 24% interest for such cases taking into consideration the penal interest being charged for the year 1999-2000 by the Income Tax Department for delayed payments. This Authority has already taken a decision that if the intention behind the Order is correctly understood in its true spirit, this Authority is not concerned about the time limit or the penal interest rate. Whatever is the rate of interest such prescription is to be uniformly applied to both sides.

- (iv). Even though the stated position of this Authority is that it is not concerned about the rate of penal interest, it cannot be left to the individual Port Trust to decide such rate. There is to be a uniformity among all major Port Trusts in this regard. On this consideration only, this Authority had decided to advise the ports to discuss the matter in the forum of IPA for a coordinated view of all the major Port Trusts to adopt a uniform interest rate. The reply now given by the IPA does not address the issue referred to it. Legally, each port cannot have freedom to decide its policy relating to tariff matters. Since the IPA has failed to recommend any coordinated view on a uniform interest rate, this Authority now *suo motu* decides on the rate of the penal interest with reference to reduction in commercial rates by banks and the Income Tax Department.
- (v). The CPT has proposed to link penal interest rate with the bank's lending rate. Bank lending rate is normally for commercial loans keeping in view the time value of money. It is not a deterrent measure to punish the defaulters. The rate of interest followed by Income Tax Department is in fact a penal measure. It is understood that the Income Tax Department is currently levying a penal interest of 18% per annum on delayed payments of tax. The MBPT has also specifically recommended to prescribe a penal interest @ 18% per annum. No other port has made any such specific suggestion about the interest rate. That being so, this Authority accepts the recommendation of the MBPT and reduces the penal interest rate from 24% p.a. to 18% p.a.
- (vi). In the Order dated 4 February 2000, it has been prescribed that the delay in refunds will be counted only 20 days from the date of completion of services or on production of all documents required from the users, whichever is later. This lead period is available to the Port Trust for processing the refund application. As in the case of the rate of penal interest, the IPA has not made any suggestion about the uniform time limit to be allowed beyond which the penal interest shall be levied. The CPT has, however, suggested that the time limit for processing refund claims by port and for payment of under charge bill, etc., by the port users from 20 days to 30 days. No other port has made any specific suggestion about enhancing the lead-time to be allowed for processing refund claim. There does not appear to be any need for increasing the lead-time. This Authority is, therefore, unable to accept this recommendation.
- (vii). The MOPT has made a specific suggestion to grant 7 days as grace period from the date of receipt of the bill to the port users. It is noteworthy that this Authority's Order dated 4 February 2000 does not allow any lead period for settling the bills by port users. This Authority has not consulted any of the ports earlier in the matter regarding allowing a grace period to the port users to settle their bills. The proposal of the MOPT is, therefore, circulated to all the major Port Trusts for their comments. Based on the comments received, this Authority will decide on the proposal of the MOPT.

10.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority amends the prescriptions made under paragraph 3 (i) and (ii) of its Order dated 4 February 2000 as follows:

- (i). The user shall pay penal interest @ 18% p.a. on delayed payments.
- (ii). Likewise, the Port Trust shall pay penal interest @ 18% p.a. on delayed refunds.

10.2. This order will come into effect immediately after its notification in the Gazette of India.

10.3. All the major Port Trusts are required to introduce appropriate changes in their Scales of Rates to incorporate the above amendments.

( **S. Sathyam** )

Chairman

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