

No. 247

New Delhi, the 19 September, 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 extends its Order dated 27 November 2000, (subsequently amended on 28 March 2001) relating to re-conversion of US dollar denominated tariffs into Indian rupees and the procedure for re-conversion of container charges denominated in US dollar terms at the time of billing by the Major Port Trusts to all the Private Terminals therein also as in the Order appended hereto.

(S. Sathyam)

Chairman

CASE No.TAMP/4/98-Misc.

ORDER

(Passed on this 30th day of August 2001)

This Authority had passed an Order on 27 November 2000 about re-conversion of US dollar denominated tariffs in to Indian Rupees at the time of billing by the Ports for common adoption by all the Major Port Trusts. The Order was notified in the Gazette of India on 3 January 2001.

2. After considering the comments of all the Major Ports and other relevant factors, it was *inter alia* decided that the existing practice of applying the RBI daily rate should continue for the purpose of conversion into Indian rupees of the dollar denominated tariffs for the purpose of billing. The Authority also prescribed a regular review of the exchange rate once in 30 days in case of vessels staying in ports for more than 30 days.

3. The Tuticorin Port Trust (TPT) informed that it was not possible to obtain the daily rate of RBI at Tuticorin for timely collection of deposits and settlement of bills. The TPT indicated that the market buying exchange rate of the State Bank of India was easily obtainable from the local SBI.

4.1. In view of the difficulties explained by the TPT, the matter was again considered and it was decided to amend paragraph No. 7 (i) of the Order dated 27 November 2000 as follows:

“Bearing in mind the suggestions of the Ports, the existing practice of applying the market buying rates notified by the Reserve Bank of

India, State Bank of India or its subsidiaries or any other public sector banks, as specified in the Scale of Rates, shall continue for the purpose of conversion to Indian Rupee of dollar denominated tariffs at the time of billing”.

4.2. The above Order dated 28 March 2001 was notified in the Gazette of India on 11 April 2001.

5. It is noteworthy that this Authority's Orders in reference have been made applicable to all the Major Port Trusts and not to Private Terminals. The Private Terminals continue to follow the 'Customs Rate' for the purpose of billing, as ordered by the Authority while approving their Scales of Rates. In the light of the prescription made for the Major Port Trusts, the two operating Private Terminals – the PSA SICAL and the NSICT – have been requested to furnish their comments, if any, in connection with adoption of the same. The comments received from them are summarised below: _

The PSA SICAL Terminals Limited

- (i). The existing arrangement of using Monthly Customs Exchange Rates is well received by our customers because it allows them to better manage their cost (i.e., cost savings), and avoid allocating huge resources to track and implement the daily changes in exchange rates (i.e., additional administrative burden).
- (ii). To-date, there is no request (from the users) to change this to a daily rate.
- (iii). Feedback gathered from both our international and domestic customers indicates that they prefer the Monthly Customs Exchange Rates it is in line with TPT's position.
- (iv). By adopting a daily exchange rate, the PSA SICAL would gain an estimated Rs.0.5 million per year in revenue because of the depreciating Rupees against the US dollars.
- (v). Customer service and satisfaction are fundamental to the success of building long-term partnership valued customers. Therefore, we would like to continue with our existing arrangement to use Monthly Customs Exchange Rates despite the potential and financial loss, for the benefits of our customers. _

The Nhava Sheva International Container Terminal Limited (NSICT)

- (i). The dollar denominated tariff is granted to the terminal operator to facilitate outward remittance of funds in foreign currency. The import rate specified by the Customs is the nearest to the rates specified by the authorised dealers for outward payments. Hence it is more logical to be permitted the use of customs rate rather than the RBI reference rate. RBI reference rate is the rate at which the banks enter into

transactions among themselves. Unlike the Major Ports, private operator will prefer to have the Customs reference rate as more suitable option for managing the outward foreign currency flows.

- (ii). The Customs Rate is declared once a month. This gives more stability to the billing process and avoids the daily fluctuations.
- (iii). Few of the US dollar denominated tariffs are period costs (reefer monitoring and storage) where the time of providing the service can not be linked to a particular day's exchange rate. In this case the import Customs Rate, which is stable throughout the month is more appropriate and logical as it covers the entire period during which the services are rendered.
- (iv). The arrangement of invoicing at Customs reference rate on the date of invoicing has worked without any major problem up to date and in our opinion does not require any change just for the sake of uniformity.

6. A joint hearing in this case was held at the CHPT premises on 17 July 2001. At the joint hearing, the following submissions were made:

The PSA SICAL Terminal Limited

- (i). We may face problems of tracking, if the daily rate is adopted. Everyday we have to check.
- (ii). Customs Rate is one for a month and, therefore, there is stability which facilitates in billing also.
- (iii). There is no ambiguity in the Customs Rate.
- (iv). While we prefer the Custom Rate, we have no problem in shifting to the SBI, etc., rate.

The Nhava Sheva International Container Terminal Limited (NSICT)

- (i). We endorse the PSA SICAL view point.
- (ii). Customs Rate is easily available to all.
- (iii). Customs Rate is much more convenient to every body specially suited to automated billing.
- (iv). RBI rate comes after 12 noon. For bills made before that time, which rate must be used?
- (v). If the difference is nominal, why not consider 'convenience of operation'? We find it convenient to apply the 'Customs Rate'. Our customers also find it convenient.

- (vi). If Port Trusts have option to choose between banks, why not give Customs Rate also as an option?

Container Shipping Lines Association (CSLA)

- (i). Usage of Customs Rate will be more convenient.
- (ii). When we get invoices for 10-15 vessels at a time we have to reckon with 10-15 different bank rates. It will be far simpler with Custom Rate.

Indian National Shipowners Association (INSA)

- (i). At the CHPT, we follow SBI rate. There has been no problem.
- (ii). We prefer the SBI rate from a uniformity point of view.
- (iii). Terminals may have some administrative problems. But, we have no difficulty.

7. The CSLA and the MANSA have also submitted written submissions which are summarised below:

Container Shipping Lines Association

- (i). The present practice followed by the Private Terminals of applying the Customs exchange rate is suitable and practical. They have not faced any difficulties in billing.
- (ii). From the Lines' point of view, this facilitates smooth payments and accounting of the Principal's expenses. We have also noted that even Customs has not faced any difficulty in the operation of Customs notified exchange rate and it is consistent with the World Trade Organisation Agreement on Customs value and this is beneficial to the ultimate customer.
- (iii). The practice followed by the Private Terminals be allowed to continue.

Mumbai and Nhava Sheva Ship - Agents' Association

- (i). In a peculiar situation like the one happened at the VPT, where a vessel stayed for almost three years, it is advisable to fix exchange rate on the vessel's "sailing date".
- (ii). In case of berth hire, port dues, pilotage, tugs' anchorage fees, etc., the exchange rate prevailing at the date of sailing shall apply.
- (iii). In case of ground rent on containers / demurrage on cargo, where they may be lying for months together, even years, in such cases, the

ground rent may be billed every month applying 'month end' exchange rate.

- (iv). In case of daily transactions such as labour supply, rate on the date of activity can be applied.
- (v). We see no logic in having constant rate for a full month, when rupee-dollar exchange rate fluctuates generally in one direction.

8. With reference to the totality of information collected during the processing of this case, and taking into account the arguments advanced at the joint hearing the following position emerges:

- (i). The substance of the effort in this case is to bring about uniformity in the matter of re-conversion of dollar-denominated tariffs to Indian rupees at the time of billing by the Port Trusts and Private Terminal Operators.
- (ii). Although this Authority was originally in favour of adopting the 'Customs Rate' for the purpose, after reckoning with the views of the Port Trusts, it was decided to adopt 'the market buying rates notified by the Reserve Bank of India, the State Bank of India or its Subsidiaries, or any other Public Sector Banks as specified in the Scale of Rates'.
- (iii). The said Order of this Authority was notified in the Gazette of India and made applicable to all the Port Trusts. Unfortunately, its application to Private Terminal Operators was lost sight of. The effort was, therefore, pursued to take up this issue with the Private Terminal Operators and cover this gap.
- (iv). Having advocated uniformity of practice in this regard, it will be incongruous for this Authority to allow two sets of practice to prevail. That being so, in the given circumstance, the Private Terminals have been required to switch over to the system prescribed for the Major Port Trusts.
- (v). The two Private Terminals operating at present – the NSICT and the PSA SICAL – have reiterated their preference for continuing with the adoption of the 'Customs Rate'. According to them, this makes for stability in costing of services, simplicity in billing, acceptance of customer preference, easy availability of the 'rate', and lack of any ambiguity.
- (vi). The CSLA has also endorsed the preference for the 'Customs Rate' by saying that its adoption will be more convenient as against the cumbersome tracking required to ascertain 'bank rates' from different banks.

- (vii). Interestingly, the MANSA and the INSA have both opted for the system preferred by the Port Trusts. The MANSA has emphatically stated that they see no logic in having a constant rate for a full month when the rupee-dollar exchange rate fluctuates generally in one direction.
- (viii). As can be seen, the opinions about the two options available are evenly divided. Incredibly, the Private Terminal Operators have stated they prefer the 'Customs Rate' for reasons of easy availability and stability even though its adoption results in loss of revenue to them! It has to be recognised in this context that, in today's computer-age, availability of the 'customs rate' or the 'bank rate' cannot be said to be a problem for any Port Trust or Private Terminal. And, bearing in mind the emphatic averment of the MANSA about there being no logic in having a constant rate for a full month when the rupee-dollar exchange rate fluctuates generally in one direction, the stability factor cannot also be seen to have any particular advantage.
- (ix). Irrespective of the *pros* and *cons* of the proposition advocated by them, both the Private Terminal Operators have nevertheless stated that, whereas their preference will be for adoption of the 'Customs Rate', they will have no problem in shifting to the 'RBI etc., Rate'. This willingness of the Private Terminal Operators to fall in line makes it easier for enforcement of this Authority's (earlier) decision about requiring the Private Terminal Operators to switch over to the system approved for the major Port Trusts.
- (x). The prescription earlier made by this Authority in the cases of Major Port Trusts is applicable for billing of vessel-related charges and container related charges which are denominated in US \$ terms. Both the NSICT and the PSA SICAL do not provide any marine related services. These are provided by the respective land lord port trusts. That being so, the procedure already prescribed in respect of reconversion of container related charges only will be relevant in respect of these two Private Terminals.
- (xi). In the case of major port trusts, the date of entry of vessel into the port limit and date of arrival of the containers in the Port premises have been prescribed as the cut-off points for reconversion at the time of billing of import and export containers respectively. In conformity with the procedure prescribed for the major ports, the date of entry of the vessel into the Terminal (in case of import containers) and the date of arrival of containers in the Terminal premises (in case of export containers) can be taken as the cut-off points for reconversion at the time of billing by Private Terminals.

9.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority decides to extend the following provisions contained in its Order dated 27 November 2000, (as amended on 28 March 2001) to Private Terminals operating within the Major Port Trusts:

- (i). The market buying exchange rates notified by the Reserve Bank of India, State Bank of India or its subsidiaries or any other public sector banks, as specified in the Scale of Rates, shall be applied for the purpose of conversion to Indian rupees of dollar denominated tariffs at the time of billing.
- (ii). A regular review of the exchange rate shall be made once in thirty days from the date of arrival of the vessel in cases of vessels staying in the port for more than thirty days. In such cases, the basis of billing shall change prospectively with reference to the appropriate exchange rate prevailing at the time of the review.
- (iii). Container related charges denominated in US dollar terms shall be collected in equivalent Indian rupees. For this purpose, the market buying rate prevalent on the date of entry of the vessel into the Terminal (in case of import containers) and on the date of arrival of containers in the Terminal premises (in cases of export containers) shall be applied for re-conversion of the dollar denominated charges into Indian rupees.

9.2. The NSICT and the PSA SICAL are directed to amend their Scales of Rates accordingly to incorporate the provisions given in paragraph 9.1 above.

10. This Order will come into effect thirty days after its notification in the Gazette of India.

(**S. Sathyam**)

Chairman

[[List of Ports](#) | [List of Orders](#)]