

No. 245

New Delhi, the 17 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 amends its Order dated 4 February 2000 (partially amended by Order dated 16 May 2001) relating to fixation of penal interest on delayed payments by the users and delayed refunds by the Port Trusts as in the Order appended hereto.

(S. Sathyam)

Chairman

Case No.TAMP/8/2000-Genl.

ORDER

(Passed on this 30th day of August 2001)

This Authority had passed an Order on 4 February 2000 relating to imposition of 24% penal interest equally on delayed payments by users and delayed refunds by the Port Trusts. This Order was notified in the Gazette of India extraordinary on 23 February 2001.

2. We had considered the views of the Indian Ports Association (IPA) and comments of some of the Port Trusts about adoption of a uniform interest rate and decided to reduce the penal interest rate from 24% per annum to 18% per annum and passed an Order to that effect on 16 May 2001. This Order was notified in the Gazette of India on 4 June 2001.

3. The Mormugao Port Trust (MOPT) has now submitted a proposal to grant 7 days as a grace period from the date of receipt of the bill to the port users. Subsequently, the MOPT has revised its suggestion to grant '7 clear working days' instead of '7 days' as a grace period to the port-users from the date of receipt of the bill. The proposal of the MOPT was earlier considered by this Authority along with the proposal for reducing penal interest on delayed payments for a uniform common adoption by all the Major Port Trusts. It was then decided to consult all the other Major Ports also on the suggestion made by the MOPT so that a uniform prescription could be made.

4.1. The proposal of the MOPT was circulated to all the Major Port Trust for comments. The comments received are summarised below:

Visakhapatnam Port Trust (VPT)

- (i). It will be appropriate to keep the grace period only as 7 days from the date of raising the bill, instead of date of receipt of the bill which is being followed generally in commercial transactions.
- (ii). The suggestion of keeping 7 days period from the date of raising of the bill on the user for the purpose of collection of penal interest may be considered._

Kandla Port Trust (KPT)

- (i). The grace period of 7 days shall be counted from the date of issue of outstanding notice to the port user instead of from the date of receipt of bill by the port user as suggested by the MOPT.
- (ii). If the date of receipt of bill is considered, either the Port has to verify it, which is tedious; or, the port has to rely on the date intimated by users, which is not advisable.

Calcutta Port Trust (CPT)

- (i). If a grace period of 7 days is allowed to port users processing the bills, the MOPT shall also be allowed the same period for processing refunds.
- (ii). If it is accepted in principle to allow grace period in case of the MOPT, the same principle shall be extended to all other Major Ports.
- (iii). The CPT had earlier suggested to increase the time limit from 20 to 30 days. If the 7 days grace period is approved to both parties, the total time period will be 27 days instead of 20 days. We once again request to re-consider the decision and to increase the time period to 30 days for both the parties.
- (iv). The purpose for charging the interest on delayed payment or refund is probably to make good the opportunity cost i.e. if the money had been deposited forthwith by the debtor, the creditor could have earned some amount by utilising the money. Since the present Savings Bank interest is the lowest rate, we feel that the penal interest must be equal to this. We request to re-consider the decision and refix the penal interest rate at 4.5% per annum.

Chennai Port Trust (CHPT)

- (i). The CHPT has already stressed the point that refund of excess amount is governed by Section 55 of the MPT Act in which there is no provision for payment of interest for delayed refunds.

- (ii). The Order of the TAMP dated 4 February 2000 relating to penal interest can be given effect only after Section 55 of the MPT Act are suitably amended to include interest for delayed refunds by the Port and delayed payments by the port users.
- (iii). In view of above reasons, the TAMP is requested to review the Order dated 4 February 2000.
- (iv). Since Section 58 of the MPT Act lays emphasis on prepayment, the question of allowing 7 clear working days as grace period to the port users does not arise as it will be in contravention of Section 58 of the MPT Act.

Paradip Port Trust (PPT)

- (i). Advance deposits are made by the users for the services likely to be obtained.
- (ii). For vessel related charges, any due payable over and above the assessed amount of advance deposit is payable before the ship is allowed to sail.
- (iii). For cargo related charges other than wharfage, like plot rent, railway, stevedoring, if any, amount is due over and above the assessed amount of advance deposit, then a bill is raised and the user is allowed 7 days time from the date of the bill to clear the dues, failing which, interest is levied. The differential wharfage dues, if any, is cleared before the ship is allowed to sail.

New Mangalore Port Trust (NMPT)

The penal interest may be charged for delay beyond the tenth day from the date of issue of intimation of the accrual of charges or date of issue of the bill, whichever is earlier.

Tuticorin Port Trust (TPT)

- (i). The Port charges which are covered under the provision of the Sections 58 and 65 of the MPT Act. There is no provision in these Sections to give grace period of 7 days to pay the Port charges. Therefore, extension of grace period of 7 days for the charges covered under the said Section will be ultra-vires of the provision of the Act.
- (ii). The Charges which are not covered under the provision of the Sections 58 and 65 of the MPT Act may be reviewed on a case to case basis to decide the grace period genuinely required by the port users to pay the demand. A blanket grace period of 7 days may not be given for the charges not covered under the said Sections.

Mumbai Port Trust (MBPT)

- (i). Earlier, at the MBPT there was a system of granting grace period of payment of bills/demand notice. This was 15 days for all bills and 30 days in case of vessel related charges. After implementation of the Order of the TAMP dated 4 February 2000, the bills in respect of services provided are required to be paid immediately the next day, and in case of services to vessels, the following day of the vessels' sailing to avoid payment of interest.
- (ii). It is felt that grant of some grace period for payment of the bill is warranted. The suggestion of the MOPT to grant 7 working days from the date of receipt of bill by the port user will be cumbersome as it will necessitate keeping track of number of working days every time in view of Sundays and Bank holidays falling in between.
- (iii). The grace period needs to be simple and defined in terms of calendar days from the date of receipt of bill/demand notice. It is felt that the grace period may be 10 calendar days from the date of receipt of bill / demand notice.

4.2. It is relevant here to mention that all the major ports were requested to furnish their comments on the issue in reference by 16 July 2001 with a clear stipulation that it would be presumed that the Port had no comments to offer if reply was not received within the stipulated date.

5. With reference to the totality of information collected during the processing of this case, and with reference to the comments received from port trusts, the following position emerges:

- (i). The CHPT has raised certain objections on legal grounds about the competence of this Authority to prescribe penal interest within the existing provisions of the MPT Act. This issue has already been settled by this Authority in our Order dated 19 July 2000 (in respect of the Calcutta Port Trust). That being so, the issue is not discussed again here.
- (ii). The intention behind this Authority's Order dated 4 February 2000 (partially amended by Order dated 16 May 2001) is to provide a level-paying condition for port-users and to prescribe uniformity in penal interest payable both ways. Towards this end, a uniform rate of penal interest has been prescribed which is applicable on delayed refunds by Port Trusts as well as on delayed payments by users. It is noteworthy that a lead-time of 20 days has been allowed for Ports to make refunds whereas no such lead-time to pay their dues has been allowed in the case of users. This differentiation has had to be made in recognition of the fact that the MPT Act requires the users to pay the applicable charges before availing port services or before obtaining port-clearance certificate, as the case may be.

- (iii). As has been brought out in the proposal of the MOPT, and in the comments furnished by the PPT, there are certain services for which bills are raised post-operation. In such cases, there is a need to allow some lead-time to users to make payments. The MBPT's comments that it was allowing a grace period to users for payment of bills before implementation of this Authority's Order dated 4 February 2000 are significant in this context.

A grace period for payment of bills by the users, if allowed, can only be confined to the cases where bills are raised post-operation by the Ports. It cannot be made applicable to those cases where payment is to be made before availing the services / using the Port Trust's properties as stipulated in the MPT Act or where payment of charges in advance is prescribed as a condition in the Scale of Rates.

- (iv). Most of the major ports have agreed with the proposal of the MOPT to allow a grace period to users.

As pointed out by the VPT and the KPT, allowing a grace period from the date of receipt of bill by users will be cumbersome, as such a detail cannot be easily captured by the Ports. As suggested by these ports, counting the grace period from the date of raising such bills by the ports appears to be more practical.

- (v). The MOPT has revised its earlier proposal to suggest that the grace period may be counted only in terms of working days. The MBPT's observation in this regard is relevant and reasonable. For the sake of simplicity, the grace period may be prescribed in terms of calendar days instead of working days. It is relevant here to mention that the lead-time allowed to the Port Trusts for refunds is only 20 days and not 20 working days.

- (vi). The MOPT has proposed a grace period of seven working days from the date of receipt of bills by users. Since the grace period is now proposed to be counted in terms of calendar days starting from the date of raising the bills by Ports, it will be reasonable to allow a grace period of 10 days, as suggested by the MBPT and the NMPT.

- (vii). The CPT's understanding about the grace period is not correct. There is no need to extend any grace period to the Ports to process refund claims as a lead time of 20 days has already been prescribed in their cases. Likewise, the CPT's arguments that penal interest is for opportunity cost and, therefore, it shall be equal to the interest rate on Savings Bank account are totally misplaced. Penal interest is a deterrent measure to ensure timely payments / refunds; and, therefore, the interest rate must be at such level that will really act as a penalty for defaulters.

The issue of prescribing a penal interest rate has already been settled; and hence, there is no need to review the rate already prescribed.

6.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the insertion of the following prescription under paragraph 3 of its Order dated 4 February 2000 (partially amended by Order dated 16 May 2001):

“(iv). The delay in payments by the users will be counted only 10 days after the date of raising the bills by the Port Trusts. This provision shall, however, not apply to the cases where payment is to be made before availing the services / use of Port Trust’s properties as stipulated in the MPT Act and / or where payment of charges in advance is prescribed as a condition in the Scale of Rates.”

6.2. This Order will come into effect immediately after its notification in the Gazette of India.

6.3. All the Major Port Trusts are required to introduce appropriate changes in their Scale of Rates to incorporate the above prescription.

(**S. Sathyam**)

Chairman

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