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Tariff Authority for Major Ports

G. No. 225 **New Delhi,** **25 July 2014**

NOTIFICATION

In exercise of the powers conferred under Sections 48 and 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal from the Chennai Port Trust for levy of berth hire charges for non cargo vessels calling at Chennai Port and idling cargo vessels as in the Order appended thereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports

Case No. TAMP/6/2014-CHPT

Chennai Port Trust **- - - -** **Applicant**

QUORUM

(i). Shri. T.S. Balasubramanian, Member (Finance)
(ii). Shri. Chandra Bhan Singh, Member (Economic)

O R D E R

(Passed on this 4th day of July 2014)

This case relates to a proposal from Chennai Port Trust (CHPT) for levy of berth hire charges on vessels other than cargo vessels calling at the Chennai Port.

2. The CHPT vide its letter dated 10 December 2013 has filed a proposal for levy of berth hire charges on vessels other than cargo vessels calling at the Chennai Port. The main points made by the CHPT in its letter dated 10 December 2013 are summarized below:

(i). As per the existing Scale of Rates of CHPT, uniform berth hire charges are prescribed for all vessels calling at the berths.

(ii). An analysis of the vessels which called CHPT during 2012-13 shows that out of the total 2053 vessels, 1928 vessels were cargo vessels and 124 vessels were non-cargo vessels (comprising of 54 supply vessels, 48 research vessels, 8 survey/ navy vessels, 10 repair vessels and 4 bunkering vessels).

(iii). Since Chennai Port does not have any exclusive service berths to handle these non-cargo types of vessels, they are berthed at Cargo handling berths. Occupying the valuable berth space, which cause strain on limited Port resources and pay meager amount to the Port on account of the berth hire, by virtue of their lesser GRT.

(iv). In spite of efforts taken to plan the berthing of non-cargo vessels without affecting cargo vessels, sometimes the berthing of cargo vessels results in shifting of existing vessels. In view of the above, it is proposed to levy separate berth hire charges for different types of non-cargo vessels.

(v). The CHPT had a meeting with users, viz. Members of Chennai and Ennore Ports Steamer Agents Association (CHENSAA) on 18 July 2013 for fixing separate berth hire charges for non-cargo vessels calling CHPT. In the meeting, there was a representation from the trade to give a reasonable time to the idling vessels to sort out the issues before fixing separate Berth Hire Charges. After discussions, mutual consensus was arrived at between the users and the Port in respect of separate berth hire charges for non-cargo vessels and idling vessels, as given below:

Sl. No.	Vessel Type	Berth Hire Charges (the rates given below or rates as per the SOR whichever is higher)
1.	Supply Vessels	₹ 25,000/- for less than 12 hours stay and ₹ 50,000/- for more than 12 hours stay / per day.
2.	Research -Government	Existing rate
	-Others	₹ 30,000/- (per day)
3.	Repairs & Maintenance	2 times of normal berth hire as per SOR
4.	Bunkering	Normal Berth Hire
5.	Idling (During operations due to	2 times of normal berth hire beyond 24

	dispute, stowage problem, ship crane repair etc.)	hours.
6.	Oil Rigs	₹ 2 lakhs (per day)
7.	Other Non-cargo vessels not specified above	2 times of normal berth hire

(vi). CHPT has furnished a copy of the minutes of the meeting with the list of attendees.

(vii). Accordingly, the CHPT has proposed to insert the following provisions as Note (8) and (9) under Schedule 2.0 (Berth Hire charges) under Chapter – II – Vessel related charges, which is seen to have been arrived through mutual consensus in the meeting with users:

"(8). Berth hire charges for non-cargo vessels will be charged at the rates given below or as per the rates prescribed in Scale – A above, whichever is higher:

Sl. No.	Vessel Type	Berth Hire Charges (the rates given below or rates as per the SOR whichever is higher)
1.	Supply Vessels	₹ 25,000/- for less than 12 hours stay and ₹ 50,000/- for more than 12 hours stay/ per day.
2.	Research -Government	Normal berth hire as per Scale – A above.
	-Others	₹ 30,000/- (per day)
3.	Repairs & Maintenance	2 times of normal berth hire as per Scale – A above.
4.	Bunkering	Normal Berth Hire as per Scale – A above.
5.	Oil Rigs	₹ 2 lakhs (per day)
6.	Other Non-cargo vessels not specified above	2 times of normal berth hire as per Scale – A above.

(9). In respect of vessels idling at the Berth for more than 24 hours during operations due to dispute between the Master of the Vessel and receiver of the cargo, stowage problem, ship-crane repair, etc., berth hire charges at 2 times of normal berth hire charges prescribed at Scale – A above shall be payable."

(viii). The CHPT has forwarded a copy of the Board Resolution dated 14 November 2013, wherein the Board has approved the levy of new rates of berth hire charges on non-cargo vessels and for idling of cargo vessels with effect from 1 November 2013.

(ix). Since the existing Scale of Rates do not prescribe separate berth hire charges for non-cargo vessels, the proposal is submitted to TAMP as per clause 2.17.1 of Tariff Guidelines of 2005. Further, as per clause 2.17.2 of the *ibid* guidelines and as approved by the Board, the proposed rates have been implemented on adhoc basis with effect from 1 November 2013, subject to approval of TAMP. It is stated that the rates proposed have been arrived based on the existing berth hire charges and has been mutually agreed by the Port and the users, as stipulated in clause 2.17.3 of the tariff guidelines.

(x). The CHPT has requested to consider the subject proposal as a part of its general revision proposal.

3.1. In accordance with the consultative procedure prescribed, a copy of the CHPT proposal was forwarded to the concerned users/ user organisations seeking their comments. One of the users viz., Indian National Shipowners Association (INSA) has furnished its comments. The comments received from the INSA was forwarded to CHPT as feedback information.

3.2. One of the private terminal operators at CHPT viz., Chennai International Terminal Private Limited (CITPL) vide its letter dated 18 February 2014 has stated that they are carrying out only Container handling /Storing services on container vessels calling at their facility as per License Agreement which are purely landside activates. The berth hire collection are solely under the purview of the licensor, Chennai Port trust. The levy of berth hire charges on vessel other than cargo vessel are beyond scope of terminal operator. Hence CITPL has no comments.

4.1. On an initial scrutiny of the proposal it was seen that though the CHPT had furnished the copy of the Minutes of the meeting held by it with the trade, where the trade is seen to have given consent to the proposed charges, the CHPT had not furnished workings to show how it has arrived at the proposed rates. Also, the details of the additional income that may accrue to the CHPT from 1 November 2013 to 31 March 2014 and for the years 2014-15 and 2015-16 year wise, on account of levy of the said rates was also necessary. Therefore, while acknowledging the proposal itself vide our letter dated 06 January 2014, the CHPT was requested to furnish the requisite information.

4.2. The CHPT vide its response dated 07 May 2014 has stated that the proposed rates for Repairs & Maintenance vessels, Idling vessels and other non-cargo vessels are derived from the existing Berth hire charges and fixed at twice the normal berth hire charges. In respect of Supply Vessels, Research Vessel (other than Govt.) and Oil Rigs, the rates have been proposed on daily/ 12 hourly basis without linking it to the GRT of the vessel. Hence, lump sum amount per day/ per 12 hours have been proposed for these categories, as agreed by the users.

4.3. With regard to the additional income that may accrue to the CHPT, the CHPT has stated that during the period from 1 November 2013 to 31 March 2014, 35 non-cargo vessels have visited CHPT. Out of the said 35 vessels, only 6 vessels attract higher berth hire charges in terms of the proposal. The actual additional revenue in respect of the said 6 vessels works out to ₹ 4.70 lakhs as given below. Since the additional revenue on account of the proposal is meagre, the same has not been assessed for the years 2014-15 and 2015-16.

(Amount in ₹)

Sl. No.	Vessel Name	Amount received as per the new levy	Amount as per the normal berth hire charges as per SOR	Difference
1	VICTORY	91954	45977	45977
2	ARK PIONEER	4608	2305	2303
3	TITAN VISION	78845	39423	39422
4	C P SRIVASTVA	275000	12794	262206
5	C P SRIVASTVA	100000	4298	95702
6	FULYA D	25000	1091	23909
	TOTAL			**469519**

5.1. A joint hearing in this case was held on 23 May 2014 at the CHPT premises in Chennai. The CHPT made a Power point presentation of its proposal. At the joint hearing, the CHPT and the concerned users/ organisation bodies have made their submissions.

5.2. As decided at the joint hearing, CHPT was requested vide our letter dated 27 May 2014 to furnish some clarification. The CHPT has responded vide its letter dated 17 June 2014. The details of the clarification sought by us and the response of the CHPT are tabulated below:

Sl. No.	Query raised by TAMP	Response of CHPT
(i).	The proposal of the port is to levy berth hire charges on vessels other than cargo vessels. The proposed Note (9) envisages levy of penal berth hire charges on vessels idling at the berth for more than 24	In the meeting held on 18 July 2013 to discuss the proposal to levy separate berth hire charges for non-cargo vessels, CHENSAA representatives wanted a reasonable time in case of vessels idling

	hours for reason, interalia, of disputes between Master of the vessel and receiver of the cargo. When the proposal of the port is to levy berth hire charges on vessels other than cargo vessel, the question of dispute between the Master of the vessel and receiver of the cargo may not arise. There appears to be a conflict between the proposed note and proposal of the port.	due to repairs, dispute, Court arrest etc. before charging Additional Berth Hire Charges. It can be seen from the minutes of the meeting held on 18 July 2013 furnished as Annexure-1 of our proposal letter dated 10 December 2013, this issue was also discussed in the meeting and mutual consensus was arrived in the meeting to charge 2 times BHC for such vessels beyond 24 hours of idling. Hence, this issue is also taken up along with the proposal for separate berth hire charges for non-cargo vessels also approved by the Board vide B.R.No. 167 dated 14 November 2013. The title of the proposal may therefore be modified as Berth Hire Charges for Non-Cargo Vessels and Idling Cargo Vessels.

5.3. After the joint hearing, the Hindustan Chamber of Commerce (HCC) vide its email dated 23 May 2014 has furnished its additional comments. The comments of HCC was forwarded to the CHPT as feedback information. The CHPT has responded vide its letter dated 17 June 2014.

6. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and arguments made by the concerned parties will be sent separately to the relevant parties. These details will also be made available at our website http://tariffauthority.gov.in

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

(i). The existing Scale of Rates of CHPT prescribe Berth hire charges for the following three categories of Vessels:

(a). Vessels called at the Port excluding Boat Basin and Timber Pond.

(b). Vessels berthed at Timber Pond and Boat Basin.

(c). Charges for the Harbour Craft registered under Harbour Craft Rules for berthing at anywhere in the Port, except Timber Pond and Boat Basin.

(ii). As seen above, the existing Scale of Rates of CHPT does not differentiate between the cargo vessels and non-cargo vessels for levy of berth hire charges. Reportedly, since the occupation of a berth by a non-cargo vessel deprives the port of a higher berth hire income (as the berth hire is leviable on per GRT basis and the non-cargo vessel is reported to have a lower GRT), the CHPT is seen to have mooted the proposal in reference, whereby it proposes to levy a separate berth hire charges for non-cargo vessels and idling vessels.

(iii). The proposal of the port is to levy berth hire charges on vessels other than cargo vessels. The proposed Note (9) envisages levy of penal berth hire charges on vessels idling at the berth for more than 24 hours for reason, interalia, of disputes between Master of the vessel and receiver of the cargo. When the proposal of the port is to levy berth hire charges on vessels other than cargo vessel, the question of dispute between the Master of the vessel and receiver of the cargo may not arise. There appeared to be a conflict between the proposed note and proposal of the port. On pointing out this position, the CHPT has clarified that based on a request made by the users in the port level meeting with regard to the vessels idling due to repairs, dispute, Court arrest etc., a mutual consensus was arrived to charge 2 times the berth hire charges for such vessels beyond 24 hours of idling and the said provision has also been proposed. The CHPT has, therefore, proposed to modify the title of the proposal as 'Berth Hire Charges for Non-Cargo Vessels and Idling Cargo Vessels.'

(iv). As brought out in the factual position relating to the case, the CHPT has made a request to consider the subject proposal as a part of its general revision proposal. In this regard, it is to state that at the time of receipt of the subject proposal from CHPT in December 2013, the CHPT general revision proposal had already been taken on consultation with the relevant stakeholders and a joint hearing on the general revision proposal was concluded. Considering the position that the subject proposal would also have to be taken up on consultation with the relevant users/ user organisations and a joint hearing may also have to be conducted on the case, it was not felt appropriate to deal with the subject proposal along with the general revision proposal. Therefore, the subject proposal was registered as a separate tariff case and dealt separately and this position was communicated to the CHPT. Nevertheless, the berth hire charges for the non-cargo vessels and idling cargo vessels approved now, would be incorporated in the Scale of Rates to be approved in respect of the general revision proposal of CHPT by factoring in the additional income accruing to the CHPT in this regard.

(v). (a). The CHPT has not furnished any workings to arrive at the berth hire charges proposed in respect of various types of vessels viz., Supply Vessels, Research Vessels, Vessels visiting the port for Repairs & Maintenance, Idling, Oil Rigs and Other Non-cargo vessels.

(b). The levy of the proposed berth hire charges is reported to be fixed at twice the normal berth hire charges for vessels berthed for repair and maintenance and other non-cargo vessels not specified in the proposed schedule.

(c). In respect of Supply Vessels, Research Vessel (other than Govt.) and Oil Rigs, the rates have been proposed on daily/ 12 hourly basis without linking it to the GRT of the vessel. However, the basis to propose twice the normal berth hire charges and basis for proposing levy of berth hire charges on daily/ 12 hourly basis in respect of some vessels has not been clarified by the port. The berth hire charges for Government research vessels and Bunkering vessels are proposed to be maintained at the existing level. The reason for maintaining status quo in the rates of Government research vessels and bunkering vessels remains unexplained. The decision of the port in this regard in relied upon.

(vi). However, considering the position reported by the CHPT that the users have given their consent for the proposal, this Authority is inclined to endorse the proposal of the CHPT.

(vii). With regard to the additional income that may accrue to the CHPT, the CHPT, based on the actual levy of the said charges during the period from 1 November 2013 to 31 March 2014, has stated to have earned an revenue to the tune of ₹ 4.70 lakhs. Further, since the additional revenue on account of the proposal is meagre, the same has not been assessed by the port for the years 2014-15 and 2015-16. In this regard, considering the position that the CHPT has earned a revenue of ₹ 4.70 lakhs during a period of 5 months from November 2013 to March 2014, it may not be unreasonable to extrapolate the income for the years 2014-15 and 2015-16. Accordingly, on a proportionate basis, an income of ₹11.28 lakhs each during the years 2014-15 and 2015-16, will be factored / taken into account while disposing the general revision proposal of CHPT.

(viii). Clause 2.17.1 to 2.17.3 of the tariff guidelines of March 2005 stipulate that whenever a specific tariff for services/ cargo is not available in the notified Scale of Rates, the port can submit the proposal and levy the rate on an adhoc basis till the rate is finally notified. In the instant case, the separate berth hire charges for non-cargo vessels are not prescribed in its SOR. As reported by the CHPT, it has already started levying the rate with effect from 01 November 2013 with the consent of the users. Based on this position, this Authority is inclined to approve the proposed levy of the berth hire charges retrospectively from the date of implementation of the rates by CHPT i.e. 01 November 2013.

(ix). The Hindustan Chamber of Commerce (HCC) has sought a clarification from the CHPT and has requested the port to confirm that the Non-commercial Pleasure Yachts and motorised Boats would not be included under this category by stating that they are non-cargo vessels. As clarified by the CHPT, the levy of berth hire charges for non-commercial pleasure yachts and sailing boats berthed outside Timber Pond and Boat Basin are governed by Schedule 'C' under '2.0 Berth Hire Charges of the existing SOR, which prescribes the Berth hire charges for Harbour Crafts registered under Harbour Craft Rules for berthing at anywhere in the port except Timber Pond & Boat basin. Thus, as reported by the CHPT, the Harbour Crafts covered under the said schedule will not attract berth hire charges applicable for non-cargo vessels. However, in order to avoid ambiguity, it has proposed to prescribe the following footnote under the proposed Note (8) relating to Berth hire Charges for non-cargo vessels:

"Note: The above berth hire charges for non-cargo vessels shall not be applicable to Harbour Crafts for which separate Berth hire charges have been prescribed in Schedule 2.0 – C.**"**

Since the proposed note gives clarity and removes any ambiguity in interpretation of the Scale of Rates, the above note proposed by the port is approved.

8.1. In the result, and for the reasons given above, and based on a collective application of mind, the following provision is approved as Note (8) and (9) under Schedule 2.0 (Berth Hire charges) under Chapter – II – Vessel related charges in the existing Scale of Rates of CHPT:

"(8). Berth hire charges for non-cargo vessels will be charged at the rates given below or as per the rates prescribed in Scale – A above, whichever is higher:

Sl. No.	Vessel Type	Berth Hire Charges
1.	Supply Vessels	₹ 25,000/- for less than 12 hours stay and ₹ 50,000/- for more than 12 hours stay/ per day.
2.	Research -Government	Normal berth hire as per Scale – A above.
	-Others	₹ 30,000/- (per day)
3.	Repairs & Maintenance	2 times of normal berth hire as per Scale – A above.
4.	Bunkering	Normal Berth Hire as per Scale – A above.
5.	Oil Rigs	₹ 2 lakhs (per day)
6.	Other Non-cargo vessels not specified above	2 times of normal berth hire as per Scale – A above.

Note: The above berth hire charges for non-cargo vessels shall not be applicable to Harbour Crafts for which separate Berth hire charges have been prescribed in Schedule 2.0 – C.

(9). In respect of vessels idling at the Berth for more than 24 hours during operations due to dispute between the Master of the Vessel and receiver of the cargo, stowage problem, ship-crane repair, etc., berth hire charges at 2 times of normal berth hire charges prescribed at Scale – A above shall be payable.**"**

8.2. The rates approved will be effective from 01 November 2013.

(T.S. Balasubramanian)
Member (Finance)

SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS / DIFFERENT USER ORGANISATIONS AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY.

F. No.TAMP/6/2014-CHPT	**-**	**Proposal from the Chennai Port Trust for levy of berth hire charges on vessels other than cargo vessels calling at Chennai Port.**

A summary of the comments of INSA and response of the CHPT thereon are tabulated below:

Sl. No.	Comments of INSA	Comments of CHPT
(i).	The Port in its proposal for general revision last year sought revision due to increase in fixed cost i.e., mainly salary and to meet obligations of Pension benefits. It would have been helpful if the proposal was submitted with some details on revenue losses and expenses thereof.	Considering that the number of non-cargo vessels visiting the port is minimum and the services provided to these vessels differ from case to case, it is difficult to quantify the revenue losses and expenses thereof.
(ii).	Although, we appreciate Port's concerns, its infrastructure is also meant to provide ships with facilities necessary for its maintenance. Importantly, if 80% of the total cost is fixed cost. Port Management has to find alternatives in sourcing revenue and reducing costs instead of targeting ships which are not earning any revenue. Idling ships in port is not desirable for owners as much as for a Port. Generally berths are allotted where cargo work doesn't take place, and the Port always has the right to ask ship to vacate berth for accommodating a vessel with cargo. Services provided by Ports to ships visiting the port due to Statutory compulsions or some critical repairs are meant to be routine.	Steps are being taken to minimize the fixed cost. 884 employees have been relieved on SVRS. Overtime expenditure is cut drastically. All efforts are taken to reduce the overhead expenses. The contention of INSA that services provided to these ships are to be treated as routine cannot be agreed to. In any case, since the number of non-cargo vessels visiting the port is minimum compared to the cargo vessels, and the rates proposed are reasonable and linked to the existing rates, the additional financial implication to the vessel agents may be marginal only.
(iii).	It would be prudent if Ports identify berth for such repairs and include detail calculations for revenue and cost when seeking tariff revision.	At Chennai Port, separate service berth for servicing of vessels is not available. Hence, the suggestion of INSA to identify separate berth for such vessels is not possible.

2. A joint hearing in this case was held on 23 May 2014 at the CHPT premises in Chennai. The CHPT made a Power point presentation of its proposal. At the joint hearing, the CHPT and the concerned users/ organisation bodies have made the following submissions:

<u>Chennai Port Trust (CHPT)</u>

(i). The proposal is mainly to enable port have a revenue stream.

<u>Hindustan Chamber of Commerce (HCC)</u>

(i). The proposed levy is applicable to Non-cargo vessels. However, the Non-commercial Pleasure Yachts and motorised Boats should not be included under this category by stating that they are non-cargo vessels. A clarification in this regard may be furnished by the CHPT.

(ii). Even now, there is a distinction between the berth hire charges applicable for vessels alongside the commercially usable berths and the Boat Basin and Timber Pond.

3. After the joint hearing, the Hindustan Chamber of Commerce (HCC) vide its email dated 23 May 2014 has furnished its additional comments. The comments of HCC was forwarded to the CHPT as feedback information. The CHPT has responded vide its letter dated 17 June 2014. The comments received from the HCC and response of the CHPT thereon are tabulated below:

Sl. No.	Comments of HCC	Response of CHPT
(i).	In continuation of the consultation held between the users, TAMP and port officers on 23 May 2014 at Chennai, the following is submitted: A hearing was already conducted on our representation, wherein the Chennai Port and HCC had arrived at consensus on levy of berth hire charges for Pleasure and non-Commercial Yachts Both motorised and Non motorised (Sailing). The berth Hire charges are covered under Chapter II of the Scale of Rates of Chennai Port Trust. Even currently there is a distinction between the berth hire charges applicable for vessels alongside the commercially usable berths and the Boat Basin and Timber Pond as shown herein below **"** 2.0 BERTH HIRE CHARGES A. Rate of Berth hire charges for Vessels called at the Port excluding Boat Basin & Timber Pond.**"** It is requested that the same distinction be maintained after the amendment is made for " Vessels with no Cargo". This will	With reference to the request of HCC to exclude non-commercial pleasure yachts and boats motorized or sailing from the berth hire charges for non-cargo vessels, it is stated that Schedule 'C' under '2.0 Berth Hire Charges of the existing SOR prescribes the Berth hire charges for Harbour Crafts registered under Harbour Craft Rules for berthing at anywhere in the port except Timber Pond & Boat basin. The berth hire charges for non-commercial pleasure yachts and sailing boats berthed outside Timber Pond and Boat Basin are covered under this schedule. Hence, the Harbour Crafts covered under this schedule will not attract berth hire charges applicable for non-cargo vessels. However, in order to avoid ambiguity, it is proposed to prescribe the following footnote under the proposed Note (8) relating to Berth hire Charges for non-cargo vessels: "Note: The above berth hire charges for non-cargo vessels shall not be applicable to Harbour Crafts for which separate Berth hire charges have been prescribe in Schedule 2.0 – C." TAMP is requested to include the above note under Note (8) of the proposed amendments in the SoR furnished in our proposal letter dated 10 December 2013.

	ensure that the pleasure and non-commercial crafts are not affected. The next solution is that the exclusion be included in the Preamble of description of the Non cargo vessels. A line may be included to state "Non Cargo Vessels excluding Non-commercial Pleasure Yachts and Boats motorised or Sailing" This will ensure that we do not get penalised by the interpretation. For the other issue we have agreed that any non-commercial pleasure Yacht that is over 25 feet and above or is powered by more than 50 HP engine or non-powered and on sails will be charged the same rate applicable to the vessels registered under the Harbour Crafts Rule.	

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