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TARIFF AUTHORITY FOR MAJOR PORTS

G.No 205

New Delhi,

18 August 2010

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 reference received from the Hindustan Chamber of Commerce with regard to the collection of crantage charges by the Chennai Port Trust on granite blocks and amends the Scale of Rates of Chennai Port Trust as in the Order appended hereto.

(Rani Jadhav)
Chairperson

Tariff Authority for Major Ports
Case No. TAMP/37/2008-CHPT

Hindustan Chamber of Commerce

Applicant

ORDER

(Passed on this 23rd day of July 2010)

The Hindustan Chamber of Commerce (HCC) vide its letter dated 11 December 2007 has made a representation with regard to the collection of crange charges on granite blocks by Chennai Port Trust (CHPT).

2. The representation was forwarded to CHPT vide our letter dated 18 December 2007 for its comments. The CHPT was also requested to furnish a copy of the order reportedly issued by the Ministry of shipping in 1991, which was referred in the HCC letter.

3. The CHPT furnished its comments vide its letter dated 29 May 2008 along with a copy of the amendment to the Scale of Rates issued by the port vide notification dated 5 October 1994, exempting export granite blocks from Heavy Lift charges. Subsequently, the HCC vide its letter dated 31 May 2008 has furnished its comments on the points made by CHPT in its letter dated 29 May 2008. The representation of HCC, comments of CHPT vide its letter dated 29 May 2008 and comments of HCC thereon vide its letter dated 31 May 2008 are summarized and tabulated below:

Sr. No.	Points raised by HCC in its letter dated 11 December 2007	Comments of CHPT dated 29 May 2008 on the representation of HCC.	Comments of HCC dated 31 May 2008 on the comments of CHPT thereon.
1.	Scale 11 – II Notes (4) of SoR of ChPT states that the heavy lift charges are not applicable for granite stones for exports. In 1991, Ministry of Shipping had issued orders exempting rough granite blocks from heavy lift and crange charges. The ChPT is interpreting the rules in its SOR in a manner which has made the export of granite blocks more expensive making the user pay a large sum of money by calculating the 10% as applicable for the 150 ton floating crane apart from hiring a private crane.	An amendment to the SoR was issued vide notification No.T2/23/3218/93/AR on 5 October 1994 (Correction slip no.7) to the effect that the Export Granite blocks would not attract Heavy Lift charges. The notification stipulates inclusion of a conditions as given below: “No heavy lift crange charges shall be levied on shipment of granite stones for Export, whenever Ship’s own derricks are used.” During the last general revision, in order to improve productivity and performance of the vessels, usage of private cranes was encouraged and accordingly, a provision was incorporated in Scale – 11 of the CHPT SOR, whereby the users bringing their own private cranes were required to pay 10% of the normal crange charges applicable to the respective cargo/ capacity as per Port’s SOR. Note (4) to Scale 11, Chapter-III of the Scale of Rates of ChPT states as follows: <i>“Whenever packages</i>	The Government vide its Notification no. T2/23/3218/93/AR (Correction slip no.7) dated 5 October 1994, have exempted heavy lift charge on rough granite blocks. Thus, calculation of 10% on the basis of rate of Heavy Lift charges is untenable and ab initio void. The Port has confirmed that the amendment made in the SoR with regard to allowing private cranes was to bring in efficiency and encourage use of private cranes. Thus note 6 to Scale 11 was incorporated, not to increase the revenue but to simplify the procedure. The Port has also confirmed that since the granite blocks are directly loaded from Trailer on to the ship, there is no collection of crange charge. This justifies that the collection of 10% of the crane charge when no crange is normally payable by this cargo is unfair. The collection of 10% charge makes the exports of granite blocks more expensive. Note (6) to Scale 11 of the SOR of CHPT may be amended as follows:

	HCC has requested to interpret the rules correctly and in its opinion 10% on crane hire charges as shown in Scale - 10 should be collected.	<i>weighing above 30 tonnes are landed or shipped or directly delivered or directly loaded by Ship's own derricks at SQ 1 only without the use of the CHPT's 50 Tonne crane, charges shall be recovered at 50% of the rates as specified above excepting for export of granites stones."</i> Note (6) to Scale 11 of the Scale of Rates of CHPT states as follows: <i>"The private cranes shall be allowed on the request of the party for port operations on payment of 10% of the charges specified in the Scale of Rates."</i> There is no provision in clause 6 for exempting granite blocks from payment of 10% charges for the deployment of private cranes. Since the granite blocks are directly loaded from Lorry/Trailer, there is no collection of crane charge. It is only for the last two years Heavy Lift Harbour Mobile Cranes capable of handling granite blocks are available in the private deployment. If there was an intention to exempt the private cranes handling granite blocks from paying the 10% charges, the same would have been clearly mentioned in either Note (4) or Note (6) of the Scale – 11 of the ChPT SOR. In the absence of such a provision, it may not be correct on the part of the Port to accede to the request of the users and extend the exemption to private cranes handling granite blocks. TAMP may take an appropriate decision and communicate the same to the ChPT.	<i>"The private cranes shall be allowed on the request of the party for port operations on payment of 10% of the charges specified in the Scale of Rates excepting for export of rough granite stones."</i>
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4. In terms of clause 3.1.5 of the tariff guidelines 2005, this Authority can entertain representations filed by individual users if it involves fixation of tariff/ Scale of Rates. In view of the fact that the HCC has raised an issue regarding applicability of the conditionality prescribed in the SOR

and bearing in mind that CHPT desires this Authority to take a decision in this regard, it was decided to process the reference received from the HCC following the usual consultation process adopted.

5. Accordingly, a copy each of the reference received from the HCC vide its letter dated 11 December 2007, CHPT's response dated 29 May 2008 on the reference of HCC and HCC letter dated 31 May 2008 furnishing its comments on the points made by CHPT were forwarded to the concerned user organizations and additional users as suggested by the CHPT vide its letter dated 5 September 2008 for their comments. The comments received from the various users / user organisations were forwarded to CHPT for its comments. The CHPT furnished its comments on the feedback information.

6. A joint hearing in this case was held on 29 June 2010 in the premises of CHPT. The HCC and the CHPT made their submissions.

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

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

- (i). This Authority had passed an Order on 7 March 2006 revising the Scale of Rates of CHPT fixed in October 2002. The Scale of Rates approved in March 2006 contains provisions for levy of crange for use of port's 50 tonne crane and 150 tonne floating crane. When a package of cargo weighing more than 30 tonnes is landed or shipped by ship's cranes only 50% of the prescribed charges are recoverable by the port from the users. However, export of granite blocks is exempted from the levy of 50% of the prescribed crange charges.
- (ii). It is relevant here to mention that, based on the approval accorded by the Government of India, the CHPT had amended its Scale of Rates in October 1994 by a Notification dated 5 October 1994 to exempt export of granite stones from heavy lift charges whenever ship's cranes are used. This provision continued in the Scale of Rates of CHPT notified subsequently from time to time.
- (iii). The Scale of Rates approved by this Authority in October 2002 contained a provision authorizing the CHPT to allow private cranes for port operations on recovery of 10% of the charges specified in the then existing Scale of Rates of CHPT, if these equipment are not available with the Port Trust. The provision prescribed in the tariff Order of October 2002 was slightly modified, as proposed by the CHPT at the request of the users, in the tariff Order of March 2006 for levying the prescribed charge on private equipment even when such equipment are available with the CHPT. Incidentally, the tariff Order of March 2006 was passed based on the consensus proposal filed by the CHPT after their discussion with all concerned user organizations.
- (iv). Levy of 10% of the prescribed crange charges for the cargo handled by private cranes is incidental to such cargo attracting the prescribed normal crange charges. Since export consignment of granite blocks is exempted from the levy of normal heavy lift charges, absence of a corresponding provision exempting the granite blocks from levy of 10% charges when such granite blocks are handled by private cranes appears to be an omission in the Scale of Rates approved in March 2006. The Scale of Rates presented before this Authority at the relevant point of time was the outcome of CHPT's consultation with the user organizations. However, absence of relevant provision in the Scale of Rates for exempting granite blocks from levy of 10% charges was not pointed out by anybody.
- (v). The HCC has suggested that the CHPT can levy a notional charge of Rs. 10,000/- per shift for granite blocks, if it is necessary. This Authority has not received any proposal from the port in this regard. If and when such a proposal is filed by the CHPT, it will be taken up for processing following the usual consultation procedure prescribed.

- (vi). Provision relating to exemption of export consignment of granite blocks from levy of heavy lift charges is prescribed in the existing Scale of Rates of CHPT in relation to 50 tonne crane as well as 150 tonne floating crane. Likewise, levy of 10% of the prescribed cranaage when private cranes are allowed for port operations is also prescribed in relation to 50 tonne crane and 150 tonne floating crane. Therefore, exemption of 10% of cranaage for handling of granite blocks, if the handling equipment is brought in by the private parties to handle granite blocks, needs to be made applicable both in cases of 50 tonne crane as well as 150 tonne floating crane.
- (vii). Realizing that retrospective amendment to the Scale of Rates of CHPT may cause complications, the HCC has agreed for effecting the amendment prospectively. As stipulated in Clause 3.2.8. of the tariff guidelines of March 2005, the amendment to the Scale of Rates approved by this Authority will come into force after expiry of 30 days from the date of Notification in the Gazette of India.

8.1 In the result, and for the reasons given above, and based on a collective application of mind, this Authority amends the existing Scale of Rates of CHPT as follows:

- (i). The existing Note– 6 under Scale – 11(I) in Chapter III (Cargo related charges) is replaced with the following :
 “(6). The Private cranes shall be allowed on the request of the party for port operations on payment of 10% of the charges specified in the Scale of Rates excepting granite stones for export.”
- (ii). The existing Note– 6 under Scale – 11(II) in Chapter III (Cargo related charges) is replaced with the following :
 “(6). The private cranes shall be allowed at the request of the party for port operations on payment of 10% of the charges specified in the Scale of Rates excepting granite stones for export. The parties shall be allowed to bring their own equipment if those equipment are not available with the Port Trust. If the equipment are available with the Port Trust and not made available to the party due to its break down, planned maintenance or having been hired to other party, the 10% charge specified above shall not be collected.”

8.2. The above amendments to the Scale of Rates of Chennai Port Trust will come into force after expiry of 30 days from the date of their notification in the Gazette of India.

(Rani Jadhav)
Chairperson

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.

No.TAMP/37/2008-CHPT

- Reference received from Hindustan Chamber of Commerce with regard to the collection of crange charges on granite blocks by Chennai Port Trust.

A Summary of the comments received from the users / user organizations and comments of the Chennai Port Trust (CHPT) on the comments of users are tabulated below:

Sl. No.	Users comments	Comments of CHPT
1.	<u>Chennai Custom House Agents Association (CCHAA)</u>	
(i).	To simplify the procedure for deployment of private cranes as and when necessary to improve productivity and turnaround time that the conditionality was amended. It was not the aim to make this as a profit center for Chennai Port.	CHPT has not furnished any comments.
(ii).	It has been missed out in the relevant Scale of Rates and notes that the 10% shall not be applicable for granite. A cargo that is exempted from application of heavy lift charges cannot be applied 10% of the same Heavy Lift Charges.	
(iii).	This is an anomaly and it is regrettable that the port is not willing to accept this anomaly and correct the same.	
(iv).	A suitable amendment should be made to the Scale of Rates and conditionalities to ensure that this anomaly is corrected and cargo which was not incurring any crange should not be penalized for deployment of private crane which increases the throughput and brings more revenue to the port directly. This indirect revenue stream which is not correct has to be stopped. It is ridiculous to see that for one shift the port has calculated and collected Rs.2,27,704/- towards 10% under crange charges.	
2.	<u>Federation of Indian Mineral Industries (FIMI)</u>	
(i).	The Granite industry is facing severe crisis owing to global competition and our country is losing its market share in the global international market. While FIMI appreciate the cooperation given by various port authorities by servicing their granite export cargo, it is necessary to highlight that the exporters of granite blocks are being levied heavy lift charges by CHI Agents. It has been requested for quite a long time to various port trusts seeking considerable assistance in providing crange with adequate capacities for lifting	(i). An amendment was brought into effect on 5.10.1994 vide Notification No.T2/23/3218/93/AR (Correction Slip No.7) that Export of Granite Blocks would not attract Heavy Lift Charges. Heavy lift means each package of cargo weighing more than 30 Tonnes. Thereafter the port has not been collecting Heavy Lift Charges on Export Granite Blocks. However, the same has been collected from all other cargoes. During the last revision, in order to improve productivity and performance of vessels and Port, usage

	granite blocks. But, due to inadequate infrastructure available from port side, the Authorities are not able to provide the desired cranes required to loading and therefore private cranes have been deployed to expedite loading of granite cargo well within the schedule prescribed by the Shipping Companies. On one side, while the exporter is made to pay out for additional charges incurred for deploying private cranes, on the other side 10% tariff as heavy lift charges charged by the port Authorities is not appropriate and tenable.	of Private Cranes was encouraged and therefore, provision was incorporated in the conditionalities under Scale-11 (Port's Scale of Rates) whereby the users who bring private crane were required to pay 10% of the normal crange charges applicable to the respective cargo / capacity as per the Port's Scale of Rates.
(ii).	The Government of India vide its notification No.T2/23/3218/93/AR (Correction Slip No.7) dated 5.10.1994 have clearly exempted heavy lift charges on rough granite block. Thus when heavy lift charges are exempted calculating the 10% on the basis of Scale of Rates of heavy lift charges is untenable, as the calculation itself is abinatio-void.	(ii). It has been stipulated under Scale-11, Notes-4 that "Whenever packages weighing above 30 Tonnes are landed or shipped or directly delivered or directly loaded by ship's own derricks at SQ1 only without the use of the CHPT's 50 Tonne Crane, charges shall be recovered at 50% of the rates as specified above excepting for export granite stones."
(iii).	The port have themselves confirmed that the amendment made in the Scale of Rates with regard to allowing private cranes was to bring in efficiency and encourage of use of private cranes. This was not done to increase the revenue of the port. The idea of Scale-11, Note-6 was to simplify the procedure.	(iii) It has been stipulated under Scale-11, Notes-6 that "The Private Cranes shall be allowed on the request of the part for port operations on payment of 10% of the crange specified in the "Scale of Rates". The exemption for payment of 10% charges for the cranes brought for handling Granites Stones has not been specified here. It is only of the last two years Heavy Lift Harbour Mobile Cranes, which are capable of handling Granite Blocks are available in the Private for deployment.
(iv).	Applying the 10% on the tariff of heavy lift charges which in itself is not applicable on export granite blocks makes it more expensive for the exporter to use private cranes thereby defeating the ports own purpose.	(iv). The HCC have raised the issues with the TAMP as port has imposed these charges on certain users who brought their private Cranes for loading of Granite Stones.
(v).	FIMI request to include one line to Note-6 that "The Private Cranes shall be allowed on the request of party for port operations on payment of 10% of the charges specified in the Scale of Rates excepting for export of rough granite stones."	(v). Port's contention is that in Clause-4 Scale-11 wherein the exemption to the Granite Blocks has been incorporated, there is no reference extending the same exemption to the Private Crane deployed to handle it. Also, clause-6 of the same Scale stipulates that Private Cranes shall be allowed on payment of 10% charges, there is no provision about the exemption to the Private Cranes that handles Granite Blocks. Since Granite Blocks are loaded directly from Lorry / Trailer, there is no collection of Crange as specified in the Scale of Rates. Had the intention of Port / Scale to exempt Private Cranes that handle Granite Blocks from paying 10% charges to the port, the same would have been clearly mentioned either under Caluse-4 or Clause-6 of Scale -11. In the absence of such provision under Caluse-4 or Clause-6, it is not correct on the part of the port to accede to the request / demand of the port users to extend the exemption to the private cranes that handles Granite Blocks. Therefore, port has collected 10% crange charges from the users for deploying the Private Cranes for handling Granite Blocks.

2. A joint hearing in this case was held on 29 June 2010 in the premises of the CHPT. In brief, the following submissions were made at the joint hearing:

Hindustan Chamber of Commerce

1. Granite was exempted from use of heavy lift cranes and charges from the year 1991 onwards. There is a specific Government Order to this extent.
2. Only in the year 2006, a special charge of 10% was introduced for private cranes. This can never be applied to Granite as they were never subjected to Heavy Lift charges.
3. When the main charge itself is exempted for Granite from Heavy Lift, it cannot be subject to a notional charge.
4. We have suggested the CHPT that they can levy, if it becomes necessary, a notional charge of Rs.10,000/- per shift for granite cranes.
5. Please amend the Scale of Rates to clearly prescribe the exemption enjoyed by Granite. We realize, any retrospective amendment may cause complications. Therefore, we agree that the amendment may be given prospective effect.

Chennai Port Trust

6. We have given our written submissions. Please consider.

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