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TARIFF AUTHORITY FOR MAJOR PORTS

GNo.96 Delhi, 11 June 2008

NOTIFICATION

In exercise of the powers conferred under Section 48 of the Major Port Trust Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal of the Chennai Port Trust for inclusion of additional clauses to govern free storage days for export of cars by RORO car carriers as in the Order appended hereto.

(Brahm Dutt)
Chairman

Tariff Authority for Major Ports

Case No. TAMP/41/2007-CHPT

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

O R D E R

(Passed on this 22nd day of April 2008)

This case relates to a proposal dated 21 July 2007 received from the Chennai Port Trust (CHPT) for inclusion of additional clauses in its Scale of Rates relating to free storage days for export of cars by RORO car carriers.

2.1 The main points made by CHPT in its proposal are summarised below:

(i). The CHPT has entered into a concessional agreement with M/s. Hyundai Motor India Ltd., for 12 years with effect from 1 April 2006 to 31 March 2018 for export of cars through CHPT. The other car exporters also have evinced interest to export their cars through the CHPT.

(ii). The time taken to aggregate Cars for Export was analyzed and it is seen that the average time taken for operation of export car carrier is 9 days.

(iii). Hence, it is proposed to reduce the free days allowed for cars handled by RORO Car carriers from the existing 30 days to 10 days.

2.2. The CHPT has proposed amendment to the existing provision at Section 1(a) and introduction of two new clauses at Section 1(a) under Scale 2 – Free Days (Exports) in Chapter IV (Demurrage Charges).

(a). The existing Section 1(a) is proposed to be amended as below:

Section	Existing provision	Proposed amendment
1(a).	Export Cargo for a vessel other than containerized Export cargo shall be allowed.	Export cargo for a vessel other than containerized Export cargo **and other than cars meant for Export through RORO Vessel** shall be allowed.

(b). The following two new clauses are proposed to be inserted:

(i). Incase of Export of Cars through RORO vessels, a free period of ten days is allowed (excluding customs notified holidays and port non-working days) from the actual day of receipt of goods in transit area.

(ii). From the day the vessel commences loading of export cargo to the day the vessel completes loading shall also be free period.

3.1 In accordance with the consultative procedure prescribed, the proposal filed by the CHPT was forwarded to the concerned user organisations seeking their comments.

3.2. The comments received from the user organisations were forwarded to the CHPT as feed back information. The CHPT has responded to the comments furnished by the users on its proposal.

4. On a preliminary scrutiny of the proposal, the CHPT was requested to furnish additional information/clarifications on various points. A summary of the main queries raised by us and the response of CHPT are tabulated below:

Sr. No.	Additional information / clarifications sought by us	Additional information / clarifications furnished by CHPT
(i).	A copy of the concessional agreement entered by the port with M/s. Hyundai Motor India Ltd.	CHPT has furnished a copy of the Agreement dated 17 January 2007 entered with M/s. HMIL.

<table>
<tr><td>(ii).</td><td>A copy of the analysis made by CHPT to determine the average time taken for operation of export car carrier as 9 days.</td><td>CHPT has furnished analysis to show that the average time taken for operation of export car carriers is 9 days.
(The analysis shows that cars are admitted about 10 days prior to the arrival of a vessel.)</td></tr>
<tr><td>(iii).</td><td>CHPT has proposed to reduce the existing 30 days free period to 10 days for motorcars handled by RORO. The demurrage charge leviable on motorcars beyond the proposed free period may be proposed with basis for the quantum of demurrage charge.</td><td>As observed in the past, cars are exported within an average period of 10 days. Hence, the question of recovery of demurrage charges will not arise in majority of shipments. The demurrage will be charged @ Rs. 4/- per ton as per item 2 of Scale - 6 in Chapter IV of the Scale of Rates beyond the free period of 10 days.
(Item 2 of Scale-6 in Chapter IV of the CHPT SOR prescribes demurrage charges for ‘Export goods and transship goods left lying in the transit area beyond the expiry of free days at Rs.3.60 per wharfage unit per day or part thereof)</td></tr>
<tr><td>(iv).</td><td>There may be financial implication due to the proposed reduction in the existing free days for the export cars. The CHPT may be in a position to utilise the storage yard more effectively. That being so, the additional income that may arise out of gainful utilisation of storage yard may be estimated for the remaining validity period of existing tariff and intimated. It may also be clarified as to how the port proposes to utilise the additional income.</td><td>A specific area has been earmarked for parking of Cars meant for Export. If the Cars are exported within 10 days, the storage space, which is vacant, will be allotted to other Car exporters, M/s. Mahindra, Nissan, Renault, Daimler Chrysler, Volvo and Caterpillar who have evinced interest for export of Cars through CHPT. However, the additional income that can be earned by utilizing the storage space cannot be assessed now.</td></tr>
<tr><td>(v).</td><td>Details of actual income for the years 2004-05 to 2006-07 realised on account of handling Export cars by RORO System alongwith the traffic handled for each of the three years.</td><td>The actual income for the years of 2004 – 05 to 2006 – 07 along with traffic handled for Export Cars by RORO system are furnished below:
<table>
<tr><th>Sl. No</th><th>Period</th><th>Income Rs.</th><th>Concession given by CHPT</th><th>Actual Income Rs.</th><th>Cars Handled</th></tr>
<tr><td>1.</td><td>2004-05</td><td>55931697</td><td>-----</td><td>55931697</td><td>83121</td></tr>
<tr><td>2.</td><td>2005-06</td><td>65371008</td><td>-----</td><td>65371008</td><td>102692</td></tr>
<tr><td>3.</td><td>2006-07</td><td>86591135</td><td>41835993</td><td>44755142</td><td>114756</td></tr>
</table></td></tr>
<tr><td>(vi).</td><td>(i). The estimated traffic of Export cars proposed to be handled by RORO System during the current validity period of the Scale of Rates (2006-07 and 2007-08).</td><td>The estimated traffic of Export Cars proposed to be handled by RORO system is as follows:

a. 2006-07 (Actuals) 1,14,756 Units
b. 2007-08 (Estimated) 1,30,000 Units

However, this does not include the additional cars that may be handled due to reduction of free days from 30 days to 10 days.</td></tr>
<tr><td></td><td>(ii).The estimated income arising out of levy of wharfage, demurrage and other miscellaneous charges supported by workings, for the years 2006-07 and 2007-08.</td><td>The estimated Income arising out of levy of Wharfage, demurrage and other miscellaneous charges are furnished below:
<table>
<tr><td>a.</td><td>2006-07 (Actuals)</td><td>Wharfage</td><td>Rs. 86591135/- (Without concession)</td></tr>
<tr><td>b.</td><td>2007-08 (Estimated)</td><td>Wharfage</td><td>Rs. 98092800/- (Without concession)</td></tr>
<tr><td></td><td></td><td>Demurrage</td><td>Rs. 221000/-</td></tr>
</table></td></tr>
</table>

5. A joint hearing in this case was held on 28 January 2008 at the premises of the CHPT when the CHPT and the concerned users made their submissions.

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 this case, the following position emerges:

(i). The existing Scale of Rates of CHPT prescribes free dwell time of 30 days for export cargo. This omnibus provision applies to all types of general cargo including motor cars. It is a noteworthy fact that the motor car exports through Chennai Port started on a regular basis from the year 2000-01 and the volumes have reportedly grown significantly. Since export of motor cars has become a regular feature and considering a relatively large storage area required by motor cars, it appears that the CHPT desires to separate this particular type of cargo from the general provision for the purpose of prescribing free storage period.

(ii). This Authority, in many cases decided in the past, has held that the storage area in a port should be used only for temporary transit purpose and should not be treated as a warehousing facility available to the trade for long term storage. Such long term storage, if permitted, can only be at the cost of productivity and may even lead to port congestion. Since the availability of transit storage area differs from port to port and the requirement varies between commodities, there cannot be a uniform prescription of free period applicable at all the major ports. The free period to be allowed depends upon the local conditions, which can be better judged by the concerned Port Administration. In recognition of this position, the revised tariff guidelines announced by the Government in 2005, leaves it open for the individual ports to propose free days. (Clause 4.5 of the revised tariff guidelines, 2005)

(iii). As has been mentioned earlier, a substantial volume of motor cars is being exported through CHPT and the volumes are promising to grow as many new car exporters are reportedly keen on routing their exports through the CHPT. On the other hand, there may not be a significant scope to enlarge the storage area primarily due to the constraints imposed by the physical features of the port. In such a situation, as correctly observed by the Hindustan Chamber of Commerce, the available area needs to be utilized judiciously.

(iv). It may be relevant here to note that the users have not completely disagreed with the proposal to reduce the free time. The disagreement is limited to the revised free period to be allowed. The major user of the facility, M/s. Hyundai Motors India Limited, (HMIL) has requested that the reduction in free period may be effected gradually.

(v). In support of its proposal, the port has furnished an analysis of dwell time of motor cars in the year 2006-07 which shows that the average period of stay of export motor car was around 10 days only. Further, the port has also brought to our notice about a special agreement dated 17 January 2007 signed by it with M/s. Hyundai Motors India Limited on mutual association between the parties applicable for a period of 12 years. Clause 12 of the agreement categorically stipulates that CHPT will permit HMIL to bring motor cars in the allotted area only 10 days prior to the shipment. Having agreed to this condition and signed the agreement, the objection raised by HMIL in this proceeding does not appear to be justified. Seen in the light of the analysis furnished by the CHPT and the relevant provision of the agreement it had signed with the major user organisation, the proposal of CHPT does not appear to be unreasonable.

(vi). Society of Indian Automobiles Manufactures (SIAM) have also endorsed the position of CHPT about the growth of motor car exports through port. At the same breadth, SIAM citing various factors except the most vital point of availability of storage space at the

CHPT to meet the growing demand, objected to the proposal. As correctly observed by the CHPT, the weather conditions delaying a ship arrival at the port or restriction imposed by the concerned authorities on vehicle movement in the city roads may not be reasons too proximate to decide the issue in hand.

(vii). The CHPT contemplates to allot the storage space released due to reduction in free period to the additional traffic. This may result in additional storage income to the port provided such additional volumes continue to remain in the storage yard beyond the permitted free time. If the past trend is taken as a pointer, demurrage charges may not accrue in majority of the shipment as a revised free time is adjusted to the average storage period observed in the past. While this Authority is inclined to accept the position maintained by the CHPT that additional income due to reduction in free period may not be precisely accessed at this juncture, such accrual will be fully accounted for at the time of the next general revision of tariff at the CHPT, which is due in April 2008.

(viii). A conditionality is already available at Sl. No. 1 (a) (ii) in the schedule relating to free days in the Scale of Rates of CHPT to the effect that the day a vessel commences loading of export cargo to the day a vessel completes loading shall also be free period. This conditionality should govern all types of export cargo, including cars. That being so, duplication of the same provision to govern the export cars may not be necessary.

8. In the result, and for the reasons given above, and based on a collective application of mind, the Scale of Rates of CHPT is amended as given below.

(i). The existing provision in Section 1(a) under Scale 2 – Free Days (Exports) in chapter IV is replaced with the following:

"1. (a). Export cargo for a vessel other than Containerized Export Cargo and other than cars meant for Export through RORO vessel shall be allowed."

(ii). The following Clause is inserted as serial No. (ii) after the existing serial No. (i) in Section (1)(a), Scale 2 – Free Days (Exports) in Chapter – IV.

"(ii). In the case of Export of cars through RORO vessels a free period of ten days is allowed (excluding customs notified holidays and port non-working days) from the actual day of receipt of the goods in transit area."

(iii). The existing serial No. (ii) in Section (1)(a), Scale 2 – Free Days (Exports) in Chapter IV is renumbered as (iii).

9. The amendments to the Scale of Rates will come into effect after expiry of 30 days from the date of notification of this Order in the Gazette of India.

(Brahm Dutt)
Chairman

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/41/2007-CHPT - **sal from the Chennai Port Trust for inclusion of additional Clause of free days for Export of Cars by RORO Car Carrier.**

1. Summary of the comments received from the user organizations and the response of the CHPT thereon are tabulated below:

Sl. No	Comments by users / user organisations	Reply of CHPT
	M/s. Hyundai Motor India Ltd. (HMIL) **Society of Indian Automobile Manufacturers (SIAM)** **Chennai Port Stevedores Association (CPSA)**	
(i).	The arrival of the Car Carrier Vessels depends on the weather conditions. The Car Carrier vessels are delayed due to cyclones and frequent engine break-down. Therefore, the proposal for reduction of free days by CHPT will affect the operations.	The weather conditions such as cyclone are exceptional cases and CHPT cannot determine the free days on the basis of such exceptional situations. It should be planned in such a way that their vessels are not affected by such exceptional situations.
(ii).	Berthing is also delayed some times due to heavy congestion at CHPT.	As per Clause V, condition No. 11 of the Agreement between CHPT and HMIL, CHPT shall give priority for HMIL's car carriers, provided HMIL gives written intimation minimum 7 days before arrival of the vessel at the outer anchorage. HMIL has been allotted 62,000 sq. mtrs. area to facilitate parking of cars for a single shipment. The question of congestion for storing their cars does not arise.
(iii).	Incase of Container shipment, if it is unable to load on a particular vessel, it can always take the next vessel. However, for Car Carrier vessels, the operation is entirely different as the vessel is called to take the entire planned quantity.	CHPT has not furnished any comments.
(iv).	The restrictions imposed by Traffic Authorities of Chennai affect the movement of export cars from the factory to the Port during daytime.	It is the policy decision of the State Government authorities to not allow any heavy vehicle into the city during peak hours especially during daytime so as to avoid accidents and traffic disruption. Moreover, the entry & exit of trucks of HMIL is through gate No. 2 & 10. This right of entry is as per the Clause V of the Agreement condition. Therefore, the contention of HMIL is not correct.
(v)	At least 21 days free time may be allowed instead of 10 days.	The HMIL's request is totally contradictory and against Clause V condition No. 12 of the Agreement which reads as "…The free parking period for exports will be as per the provision of CHPT's Scale of Rates as fixed by TAMP or any other authority from time to time. CHPT will permit HMIL to bring the cars in the allotted area only ten days prior to the shipment".

(vi).	Other Original Equipment Manufacturers (OEM) in India may be in dilemma whether to utilise CHPT or not.	CHPT has not furnished any comments.
	<u>The Chennai Custom House Agents' Association (CCHAA)</u>	
	CHPT should encourage other Car Exporters to export their car through CHPT and allot space to them for storing their Export Cars.	CHPT has not furnished any comments
	<u>Hindustan Chamber of Commerce (HCC)</u>	
(i).	CHPT with its limited space needs to utilise open transit areas judiciously such as those given to HMIL on a long term basis for storage and export of their Cars through CHPT.	CHPT has not furnished any comments
(ii).	CHPT after having signed a long-term agreement with HMIL for storage and export of their cars through the allotted area now wishes to propose a clause to permit HMIL to store and export any cargo through the allotted area on long-term basis. This is ambiguous and not clear.	
(iii).	In clause 1a(i) the Port is permitting 30 free days and does not seek any change, whereas in clause 1c(iii) the CHPT wishes to introduce a clause of 10 free days only for export of cars through RORO. The proposed clause 1c(iii) contradicts the existing clause 1a(i).	There is no contradiction. Clause 1a (i) excludes the free days for export through RORO vessels, which has been specifically mentioned under clause 1c (iii).
(iv).	The CHPT has mentioned that other Car Manufacturers have evinced interest to export their cars through CHPT. If this is the case, then CHPT should ensure effective utilisation of land in accordance to the revised Land Policy guidelines by calling for tender for allotment of storage area on a premium rate over and above the notified scale of rates.	CHPT has not furnished any comments.
(v).	It is agreed that the free days have to be reduced.	

2. A joint hearing in this case was held on 28 January 2008 at the premises of the CHPT. The CHPT and the concerned users made the following submissions:

<u>CHPT</u>

(i). When car exports through our port commenced, we allowed 30 days free period for aggregation of cars for shipment. Since storage yard capacity is limited and volumes have since increased, we need to seek better turnaround of storage yard area.

(ii). We want to improve utilisation of the yard, as many new exporters have started using our port.

(iii). Our analysis of past data shows that dwell time of cars in the port yard is around 10 days only. Hence, our proposal.

<u>Hyundai Motors</u>

(i). Chennai city has traffic restrictions. Further, our volumes have increased from 10,000 PCUs per month to around 21,000 PCUs per month. We need more time to aggregate shipment.

(ii). Car carrier operation is different from other cargo operations.

(iii). Even if it is essential to reduce the free period for the sake of improving operational efficiency, the reduction should be gradual. We suggest, that free period may be reduced to 21 days in the first instance.

Society of Automobile Manufactures

(i). Chennai Port is emerging as a car export hub in our country. The port should facilitate the export. Instead of reducing the free period, the port must consider increasing parking slots in the yard through additional investment.

Hindustan Chamber of Commerce

(i). We support the proposal of CHPT as there is a genuine necessity to optimally use the yard to cater to additional volume of business.

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