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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 157 **New Delhi,** **12 April 2021**

NOTIFICATION

In exercise of the powers conferred under Section 48 of the Major Port Trusts Act, 1963 (38 of 1963) and in compliance of the Order dated 13 February 2020 passed by the Hon'ble High Court of Madras in the Writ petition No.11020 of 2012, the Tariff Authority for Major Ports hereby disposes of the representation filed by Trans Asian Shipping Services Private Limited (TASSPL), as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/39/2012-CHPT

The Trans Asian Shipping Services Private Limited (TASSPL) - - - Applicant

QUORUM

(i). Shri. T.S. Balasubramanian, Member (Finance)
(ii). Shri. Sunil Kumar Singh, Member (Economic)

O R D E R
(Passed on this 16th day of March, 2021)

The Trans Asian Shipping Services Private Limited (TASSPL) under cover of its letter dated 16 June 2011 had made a representation to this Authority with regard to the demand of storage charges by Chennai Container Terminal Private Limited (CCTPL) on one of its confiscated container. The main points of the TASSPL letter dated 16 June 2011 are given below:

(i). TASSPL released its container bearing No. RWAU2408198 to M/s. ACS Shipping (P) Ltd., Chennai across to their firm booking for export shipment on 16 February 2007. The trailer along with the subject container was intercepted by the DRI while in transit to the Port on suspicious grounds of Sandal wood smuggling. Later the container along with cargo was seized by the DRI and kept hold in the Port premises for further investigation. In the meantime, the Commissioner of Customs accorded permission to release the container finding that container has not at all formed the part of the offence. Even after the receipt of this order the container was not released and finally the Commissioner of Customs exonerated TASSPL from all the proceedings and directed to release the container without further delay.

(ii). CCTPL is demanding amount towards storage charges for the said container as per TAMP Scale of Rates for releasing the same. It is submitted that TAMP Scale of Rates is applicable only in the case of long idling containers not confiscated or undergoing customs proceedings. Therefore, levying charges against the said container idling in the Port for the purpose of DRI investigation is illegal. We are not at all involved in this alleged offence under DRI investigation.

(iii). As per the Circular No. 84/95, dated 25 July 1995 bearing No. 450/61/93, issued by the Central Board of Excise and Customs (Department of Revenue, Ministry of Finance, Government of India) it is declared and clarified that detention by any authority for long periods under the guise of investigation is unfair and cumbersome for container agents.

(iv). Though TASSPL produced the order of the Commissioner of Customs before CCTPL, its response was negative and effective release of container was made subject to the clearance of storage charges upfront.

(v). The container was idling in the Port for the purpose of DRI investigation and not due to the reasons under the control of TASSPL. As per law of the land TASSPL is bound to abide and facilitate itself for any statutory investigation. The TASSPL was constrained to put the container in the yard in order to comply with the process of investigation.

(vi). As per Section 2(o)(i) of the Major Port Trusts Act, 1963, the carrier / line will not come within the definition of owner in relation to goods. Section 2(o) defines owner, (i). in relation to goods, includes any consignor, consignee, shipper or agent for sale, custody, loading or unloading of such goods. Therefore, the TASSPL as a carrier cannot be held liable for the storage charges for the cargo undergoing confiscation proceedings.

(vii). It is, therefore, prayed that:

(a). Declare that the demand made by CCTPL is illegal.
(b). Direct the CCTPL to release the container bearing No. RWAU2408198 forthwith.

(viii). The prayer is on the following grounds:

(a). The demand made by CCTPL towards storage is illegal, irregular and without jurisdiction.
(b). The CCTPL has blatantly violated TAMP notification and illegally demanding the storage charges from the TASSPL.
(c). TAMP Scale of Rates is applicable only in the case of long idling containers not confiscated or undergoing Customs proceedings. Therefore, levying charges against this container idling in the Port for the purpose of DRI investigation is illegal since the container was kept in the yard in order to comply with the process of DRI investigation. As per the law of the land, the TASSPL is bound to abide and facilitate itself for any statutory investigation.
(d). The CCTPL ought to have found that the TASSPL is as a carrier cannot be held liable for the storage charges and the present demand in the head of storage charges is totally illegal and in violation of statutory rules and regulations.
(e). The CCTPL ought to have found that the Customs has confiscated not the container but the cargo stuffed in the container.

1.2. As part of its representation, the TASSPL has furnished the following documents.

(a). Order of Commissioner directing the release of the Container bearing No. RWAU2408198.
(b). TASSPL letter dated 26 October 2009 to CCTPL.
(c). CCTPL reply letter dated 20 August 2010.
(d). TASSPL letter dated 08 September 2010 to CCTPL.

2.1. Thereafter by a Writ Petition No. 11020 of 2012, the TASSPL approached the Hon'ble High Court of Madras.

The main grounds on which the TASSPL has filed the said Writ Petition are as follows:

(i). The 2nd Respondent cannot compel the Petitioner to pay a sum of ₹16,14,664/- towards storage charges of container, which was confiscated and retained by the DRI officials in an investigation for a longer period. The Petitioner is duty bound to facilitate investigation by DRI and hence cannot be penalized.

(ii). The 2nd Respondent has failed to consider the fact that the Petitioner is not the owner of the goods as per the definition in the Major Port Trust Act and hence cannot be asked to pay for the detained container.

(iii). The 2nd Respondent has failed to consider the diligent steps taken by the Petitioner for the release of the container.

(iv). The 1st Respondent has failed to pass any Order on the appeal made by the Petitioner vide its letter dated 16 June 2011.

2.2. On the grounds made by TASSPL in its writ petition, the TASSPL has made the following prayers before the Hon'ble High Court of Madras:

(i). Restrain 2nd Respondent from demanding storage charges, pending disposal of appeal filed by the Petitioner by the 1st Respondent.

(ii). Direct the 2nd Respondent to temporarily release the container without insisting for any storage charges, pending disposal of appeal filed by the Petitioner by the 1st Respondent.

(iii). Direct the 1st Respondent to consider the appeal dated 16 June 2011 and pass appropriate orders within a time limit as fixed by the Hon'ble Court.

3. Since the TASSPL had approached the Court with regard to the above mentioned representation, it was felt appropriate to not process the representation of TASSPL dated 16 June 2011 at that point of time, since the matter was subjudice. Thus, it was decided to take action as per the Order of the Hon'ble High Court of Madras in the said Writ Petition.

4.1 In this backdrop, the Hon'ble High Court of Madras has passed an Order dated 13 February 2020 on the subject Writ Petition filed by the TASSPL. The operative portion of the Order of the Hon'ble Court is as follows:

> **"***It is the case of the petitioner that certain goods which were found in the Container belonging to the petitioner were confiscated by the third respondent on 14.02.2007.*
>
> *It is the case of the petitioner that the petitioner is the owner of the container and not the confiscated goods. According to them, they are not liable to pay any port storage charges for the period during which the container was confiscated and lying at the port premises. According, to the petitioner, the impugned demand issued by the second respondent is arbitrary and illegal. Aggrieved by the same, the petitioner has preferred an appeal before the first respondent, which is still pending on its file. Hence, the petitioner has filed this writ petition for a Mandamus to direct the first respondent to dispose the appeal within a time frame to be fixed by this Court.*
>
> *Heard Mr. W.M.Abdul Majeed, learned counsel for the petitioner, Mr. S.Raghunathan, learned counsel for the 2nd respondent and Mr. M. Devendran, learned counsel for the 4th respondent.*
>
> *Admittedly, the appeal filed by the petitioner before the first respondent is still pending. The only relief sought for by the petitioner in this writ petition is for a direction to dispose of the appeal pending before the first respondent within a time frame to be fixed by this court.*
>
> *The relief sought for by the petitioner will not prejudice the interest of any of the parties to this writ petition. Therefore, this court is inclined to grant the said relief.*
>
> *Accordingly, this court directs the first respondent to dispose of the appeal dated 16.06.2011, filed by the petitioner and pass final orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order, after affording sufficient opportunity to both the petitioner as well as other parties to the appeal including granting them the right of personal hearing.***"**

4.2. From the Order of Hon'ble High Court dated 13 February 2020, it is seen that this Authority has been directed to dispose of the representation dated 16 June 2011 filed by TASSPL and pass final orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of the copy of the Court Order, after affording sufficient opportunity to both the petitioner as well as other parties to the appeal including granting them the right of personal hearing.

5.1. As brought out above, the Hon'ble High Court has disposed the subject Writ Petition filed by TASSPL on 13 February 2020. The copy of the Order of the Hon'ble High Court has been received by the office of this Authority on 21 September 2020. Thereafter, the process to deal with the representation filed by CCTPL, as per the directions of the Hon'ble Court was initiated.

5.2. Accordingly, a copy of the representation of TASSPL dated 16 June 2011 along with its enclosures was forwarded to CCTPL, CHPT and Commissioner of Customs, Tiruchirapalli who were Respondents, apart from this Authority; to this Writ Petition filed by TASSPL vide letters dated 07 October 2020 with a request to furnish their specific comments on the TASSPL representation.

5.3. In this regard, the Joint Commissioner of Customs, Tiruchirappalli vide his letter dated 16 October 2020 and CHPT vide its e-mail dated 25 October 2020 have responded as follows:

(i). **The Joint Commissioner of Customs, Tiruchirappalli**

The writ petition is against the container storage charges of ₹16,14,664/- demanded by the CCTPL, Chennai (2nd Respondent) and M/s. Trans Asian Shipping Services Pvt. Limited, Chennai in connection with an offence case registered by DRI, Chennai and adjudicated by the Joint Commissioner of Customs, vide order in original No.02/2010-JC dated 30.04.2012. The adjudicating authority released the container as it warranted no confiscation.

Further, the Joint Commissioner of Customs, Trichy is only a Proforma Respondent in the writ petition. Hence, there is no specific comments to be offered by this office.

This is issued with the approval of Commissioner of Customs (Preventive), Trichy.

(ii). **Chennai Port Trust**

The subject container is handled at CCTPL, the applicability of charges would be as per the Scale of Rates of CCTPL approved by TAMP. As such, CHPT has no specific remarks to offer.

5.4. After a reminder dated 18 November 2020, the CCTPL vide its e-mail 25 November 2020 has responded. The submissions of CCTPL are as follows:

(i). TASSPL is not entitled to the relief sought in this appeal. What is sought to be challenged by the TASSPL in the above appeal is the levy/ demand of container storage charges by CCTPL, which demand was made on account of the fact that the Container bearing No. RWAU 2408198 belonging to the TASSPL was brought from shipment and had remained in the CCTPL's Container Terminal since 14.02.2007.

(ii). The container storage charges which has been levied/ demanded by the CCTPL is on the basis of the tariff fixed by the TAMP, which is a Statutory Authority constituted under Chapter VA of the MPT Act. The TAMP fixes the rates and other charges to be levied by the various Port Authorities and the Container Terminals in India in terms of Section 48 of the said Act in respect of the various services rendered under Section 42 of the said Act. The tariff or the scale of rates is fixed by the TAMP in exercise of the statutory powers vested with it under the provisions of the said Act and in accordance with the procedure prescribed under the relevant Rules and Regulations. Further, the said Act as well as the Rules and Regulations framed thereunder, do not contemplate an Appeal being preferred to the TAMP against the levy of any charges including storage charges imposed by a Port Authority or a Container Terminal under Chapter VI of the Said Act. Therefore, the alleged Appeal preferred by the TASSPL is beyond the scope and purview of the Said Act and is not maintainable in law. Consequently, the relief that is being sought for in the appeal cannot also be considered or granted. The above appeal is therefore liable to be dismissed in limine.

(iii). What is indirectly sought to be challenged by the TASSPL in the above appeal is the levy of container storage charges by CCTPL as per the tariff fixed by the TAMP. However, the various Port Authorities and the Container Terminals in India are required and are bound to levy such charges only on the basis of the scale of rates framed by the TAMP under Section 48 of the Said Act. The exercise of such power by the TAMP is statutory in nature. It is not in dispute that the quantum of charges demanded by the CCTPL is only on the basis of the scale of rates fixed by the TAMP. In such circumstances, in the absence of the TASSPL challenging the scale of rates framed by the TAMP, in a manner known to law, it would not be open to the

TASSPL to challenge either the levy or the quantum of the container storage charges levied or demanded by CCTPL.

(iv). Further, the TASSPL cannot also claim waiver or remission of the rates levied by the CCTPL. The power to cancel or modify the rates or tariff fixed by the TAMP vests only with the Central Government, in terms of Section 54 of the Said Act. Therefore, the TASSPL would not be entitled in law to challenge the demand for payment of container storage charges by the CCTL.

(v). It is submitted that even on facts, TASSPL's plea for waiver of or exemption from payment of container storage charges would not be maintainable. It is submitted that the container in question was brought to the Container Terminal at Chennai on 14.2.2007 and as per the declaration made by the Shipper, a cargo of 'Handicraft Items made of clay' was said to be stuffed in the said container. However, upon inspection of the container by the Directorate of Revenue Intelligence (DRI), it was said to contain 'Red Sanders'. Consequently, the said container with the cargo was detained on 14.2.2007 for further investigation and CCTPL was directed by DRI to detain the said container in the Container Terminal itself and not permit its removal therefrom.

(vi). It appears that upon representations made by the TASSPL, the Customs Department permitted the de-stuffing of the cargo and permitted the provisional release of the container on 23.10.2009. The Order passed by the Joint Commissioner of Customs, Chennai was communicated to the CCTPL on 26.10.2009. The CCTPL has thereafter been repeatedly requesting the TASSPL to arrange for removal of the container from the terminal after paying the container storage charges. The TASSPL has however, failed and neglected to remove the container but had been disputing their liability to pay the said charges. The TASSPL's container which is lying for over five years is causing an impediment to the flow and movement of the containers within the Terminal.

(vii). The TASSPL has not taken any steps to remove the container. As a consequence, the storage charges has been mounting. Had the TASSPL been prudent, they could have approached the Customs Department and sought their permission to remove the container to an Off-Dock Container Freight Station with or without the cargo. Had they done so, the storage charges would not have mounted to the extent it has. The Hon'ble Supreme Court as well as the Hon'ble Madras High Court have held that even in cases where the containers and/ or the cargo are detained due to intervention of Customs Authorities, it would still be open to the statutory custodian of the cargo to levy and demand payment of storage charges and that it would not be open to the owner of the cargo or the container to seek waiver of such charges. In any event, the levy in the instant case is only on the basis of the scale of rates framed by the Statutory Authority. Therefore, the TASSPL would not be entitled to the reliefs sought for in the above appeal.

(viii). The container in question was brought to the terminal of the CCTPL on or about 14.2.2007. In the Shipping Bill that was filed with the Customs Department, a declaration was made as though the cargo stuffed in the said container was a consignment of 'Handicraft Items made of Clay' and was to be carried by the TASSPL to Dubai. However, upon the container being opened for inspection by the DRI, the container was found to contain a consignment of 'Red Sanders Wood' which is an item prohibited from being exported. Therefore, the Customs Authorities directed the seizure of the cargo as well as the container and the CCTPL was directed not to release the consignment.

(ix). It appears that after investigation, there was an Order of Adjudication passed by the Joint Commissioner of Customs who directed the cargo to be confiscated absolutely. However, the container was ordered to be released provisionally, prior to the said Order of Adjudication. The said Order granting provisional release was communicated to CCTPL on 26.10.2009. CCTPL was not only ready and willing but was also anxious about the removal of the container by the TASSPL, subject to the payment of the storage charges.

(x). It is denied that the demand for payment of container storage charges is impermissible in a situation where a container had been ordered to be released, provisional or otherwise. It is stated that as per scale of rates framed by the TAMP as well the guidelines issued, a statutory guardian like the Port Authority or a private Container Terminal like CCTPL, is entitled to levy storage charges until the date of removal of the container from its premises. The relevant Clause of the Scale of Rates framed by the TAMP is reproduced below:-

> **"***(iv). Where the container is seized / confiscated by the Custom Authorities and the same cannot be de-stuffed within the prescribed time limit of 75 days, the storage charges will cease to apply from the date the Customs order release of the cargo subject to lines observing the necessary formalities and bearing the cost of transportation and destuffing. Otherwise, seized/ confiscated containers should be removed by the Lines/ consignee from the port premises to the Customs bonded area and in that case, the storage charge shall cease to apply from the date of such removal.***"**

It would be clear from the above that the container line TASSPL herein would be liable to demand and recover storage charges in respect of the container until it is actually removed from the Terminal, notwithstanding the fact that the container or the cargo stuffed therein had been detained on account of any violation by the shipper or the consignee, and for no fault of the container line.

(xi). TASSPL was repeatedly informed in writing by CCTPL that the levy of container storage charges including the quantum of the same was only based on the scale of rates framed by the TAMP. CCTPL had sent very detailed letters to the TASSPL including by their letters dated 20.8.2010 and 21.6.2011. CCTPL had also impressed upon the Customs Department and the DRI about the need for immediate removal of the container by the TASSPL. Notwithstanding the same, the TASSPL had not bothered to remove the container but had allowed the container to remain in the Container Terminal, resulting in the storage charges accruing at a penal rate as per the scale of rates.

(xii). It is submitted that in respect of containerized cargo, the Container Line or their Agents ought to be considered as 'the owner of the goods' unless and until the cargo is de-stuffed from the container. It is submitted that as long as the cargo continues to be stuffed and remained inside the container, the Container Line should also be deemed to be the owner of the cargo stuffed in the container. Even after the cargo is de-stuffed from the container, the Container Line would be liable to pay the storage charges until the container is removed from the Terminal after payment of charges.

(xiii). Further even in cases where the container and/ or the cargo is seized under the provisions of the Customs Act and even if the container and/ or the cargo is released by the appropriate officer of the Customs Department, after adjudication, the owner of the container and/ or the cargo would remain liable in law for payment of storage charges until they are removed after payment of such charges. Therefore, the TASSPL cannot claim as though they would not be liable for payment of container storage charges merely because they were absolved from any liability pursuant to adjudication proceedings by the Customs Department. Therefore, the mere fact that an Adjudicating Authority passing an order holding that the confiscation of the container was not warranted and he proceeds to drop the proceedings against the container line, it would not by itself absolve the Container Line from its liability to pay the container storage charges in terms of the scale of rates framed by the TAMP.

(xiv). It is submitted that the TASSPL was repeatedly disputing the levy of storage charges by CCTPL and pleaded for waiver of such charges. However, in as much as levy of such charges by the CCTPL was justified in law and was based on the scale of rates, the CCTPL was not in a position to waive such charges. The TASSPL had various options to mitigate the situation including the container without the cargo to an off-dock Container Freight Station after obtaining the necessary permission from the Customs Department. The TASSPL had not taken any action in this regard despite CCTPL consequently explaining the legal position to the TASSPL by its various letters. It is submitted that a mere perusal of the relevant Clause of the Scale of Rates and the Guidelines issued, it would be clear that the CCTPL was well within its rights to levy/ demand the payment of storage charges. Having failed to take necessary and appropriate action for the early removal of the container, the TASSPL would not be justified to claim waiver of the container storage charges either from CCTPL or CHPT nor seek the intervention of the TAMP to direct the CCTPL to withdraw the amount for payment of different charges.

(xv). It is not open to the TASSPL to claim as though that the levy of storage charges was wrong and unjustified since the container was kept lying in the yard in order to process the complete investigation by the DRI and that the situation was beyond the control of the TASSPL. The TASSPL had not taken any action despite having been categorically informed about is obligation to remove the container from the container terminal of the CCTPL. Having allowed the container and the cargo to remain in the Terminal for an inordinately long period of time and occupying valuable storage space, the TASSPL can now be heard to complain about the demand or recovery of the storage charges.

(xvi). As regards the various grounds raised by the TASSPL in the appeal, it is denied that the demand of storage charges by the CCTPL was under a wrong interpretation of Rules and that the levy of storage charges is illegal, arbitrary and unlawful. It is submitted that the liability of the TASSPL to pay the storage charges and the quantum thereof are only as per the scale of rates framed by the TAMP which has a statutory force.

(xvii). It is submitted that the Hon'ble Supreme Court has upheld the levy of storage charges by a statutory custodian of cargo, even in a case where the cargo has been detained pursuant to any investigation / adjudication by the Customs officers and for no fault of the owner thereof. Given the facts of the instant case and during the pendency of the investigation/ adjudication, to avoid the accrual of container storage charges, the TASSPL could have removed the container, with or without cargo to an Off-Dock Container Freight Station, where the storage charges are much less when compared to a Container Terminal in the heart of the city. Having failed to do so, the TASSPL cannot be heard to complain at such a belated stage.

(xviii). It is submitted that the mere fact that the TASSPL had approached the Joint Commissioner of Customs for release of the container as early as 19.8.2011 and secured the release of the container, it cannot be said that the TASSPL would not be liable for the payment of storage charges. In this regard, it is submitted that in terms of the Scale of Rates framed by the TAMP, notwithstanding the seizure of the cargo or the container and its subsequent release pursuant to an Order of Adjudication by the Customs Department, the owner of the container or the cargo shall remain liable for payment of storage charges until they are actually removed from the Container Terminal. It is submitted that the TASSPL would be deemed and considered to fall within the definition of "owner" "of the goods" under Section 2(o)(i) of the Said Act, since the TASSPL has contractually taken on the responsibility of loading and unloading of the cargo and further as long as the cargo remains within the container, the TASSPL will be deemed to be the owner of the container as well as the goods, in terms of Section 2(o)(i) of the Said Act.

(xix). It is submitted that in as much as the levy of storage charges in respect of the Container No. RWAU 2408198 has been in accordance with the scale of rates framed by TAMP, the TASSPL would not be entitled to seek direction to the CCTPL for release of the container without insisting on or demanding any charges including storage charges in respect of the said container.

(xx). It is, therefore, requested that the subject application filed by TASSPL may be disposed based on the above facts.

5.5. The said comments of CCTPL was forwarded to TASSPL vide letter dated 26 November 2020 to elicit the views of TASSPL on the submissions made by CCTPL. The TASSPL has not specifically responded to the said submissions of CCTPL.

6.1. As brought out earlier, the Hon'ble High Court has directed this Authority to pass final orders on merits and in accordance with law, after affording sufficient opportunity to both the petitioner as well as other parties to the appeal including granting them the right of personal hearing. Accordingly and in view of the outbreak of COVID – 19 and in pursuance of the Ministry of Shipping (MOS) letter No. 11053/30/2020-Coord. dated 16 April 2020 to hold virtual meetings, a personal hearing was accorded to the parties on 01 December 2020 through Video Conferencing. At the hearing, the representatives of TASSPL, CCTPL and CHPT have made the following submissions:

Trans Asian Shipping Services (P) Ltd. represented by the Legal Officer

(i) We filed a Writ Petition before the Hon'ble High Court of Madras to dispose of application filed before the TAMP for waiving of Ground Rent charged on a container at CCTPL.

(ii). The Container that was held up in the port premises was basically Directorate of Revenue Intelligence (DRI) seized up container. Later we got NOC from the respective holding Authority. For the meantime, the charges, which is an exorbitant amount which is outweighing container value has been billed to us. We have disputed to this billing and had filed an application to TAMP, which was not considered by TAMP.

(iii). We had no other remedy except to approach Hon'ble High Court by filing a Writ Petition to consider to give a direction to either waive of the charges to the confiscated container or to consider our application filed with TAMP, which is long pending.

(iv). We understand that the Hon'ble High Court of Madras gave an Order to TAMP to dispose our application within a short span of time. The order had come in this year early in March 2020.

(v). The Hon'ble Supreme Court in the month of August 2020 passed an order, wherein, the terminals are not supposed to be charging ground rent to the Steamer Agents or its lines. Whatever charges are due, are to be collected from the consignee or importers or their agents. In light of the recent Hon'ble Supreme Court order, we are not liable for any charges whatsoever in terms of Ground Rent or any Cargo Related Charges. It has to be imposed on the Consignees. In case of seized containers, firstly, Ground Rent is not applicable, just because of the container was held up by holding Authority and issuance of orders to that extent.

(vi). Secondly, Hon'ble Supreme Court has clarified that any charges on account of Ground Rent or Cargo Related Charges shall not be on Shipping Lines.

CCTPL represented by its Legal Counsel

(i). We have lot to say on the merits of the matter. The petitioner has mentioned about the Order of Hon'ble Supreme Court passed in August 2020. We have not come across such orders of Hon'ble Supreme Court. The petitioner may circulate the order of the Supreme Court for our consideration.

(ii). The Container is lying in the terminal for last more than ten years, in fact, it has arrived in February, 2007 and had been intercepted by DRI and it has been lying from then. The order of adjudication was passed by the Department of Customs on 30 April 2010, thereafter it has been lying there.

(iii). Before the matter is taken up on merits, we can arrange for some kind of amicable resolution of the matter because the charges are mounted to be an enormous amount, it is about ₹. 24 to ₹. 25 lakhs, which is nothing when compared to the value of the container, subject to Port also agree to waive of its revenue share.

(iv). This submission made by us is without prejudice to what we would be submitting on the merits of the matters.

(v). We submit that, we are willing to consider some waiver, not the entire amount subject to the Port also agrees to waive its charges and subject to container lines also accept to this proposal.

[Member (F): Trans Asia may like to take some time to understand how much amount CCTPL is willing to waive etc.]

[Trans Asia: We may not able to comment at this stage. The Container Value is about ₹. 9 lakhs before 10 years and has depreciated over the period. So we would like to understand what the settlement amount would be vis-à-vis the container value.

[Member (F): Whether the container has been released or still in Terminal.]

[Trans Asia: No, the container is still in Terminal.]

[Member (F): Both the parties may take some time to resolve the issue, if possible.]

(vi). The Petitioner, Trans Asia has preferred an application to the Authority (TAMP). We do not know under what section of law that a representation has been made in 2011.

(vii). The Authority is a Statutory Authority vested with separate powers under the Major Port Trusts Act 1963. The Authority has been formed under Section 47 of the MPT Act, 1963 and the power of the Authority are set out in Section 48, generally in Chapter 6 of the MPT ACT, 1963.

(viii). The Petitioner may well submit that it has filed a representation in early 2011, because they were not referred for a hearing or there was not development in the matter. It approached the Hon'ble High Court and the Hon'ble High Court has directed to consider their representation, therefore, the petitioner probably submit that they are entitled to approach the Authority.

(ix). We refer to the paragraph no. 5, 6 & 7 of the Hon'ble High Court Orders dated 13 February 2020 [Legal counsel reads those paras]

Pursuant to the direction at para no. 7 of the Hon'ble High Court orders, the present Joint Hearing is scheduled today.

The directions that has been given by the Hon'ble High Court is to consider the representation made by the petitioner in June 2011 and pass final order on the merits and in accordance with the law.

(x). If the statute by which the Authority has been constituted and if the statute gives necessary powers and jurisdiction to the Authority to consider and decide the particular matter, then it may be done. The order passed by the Hon'ble High Court cannot be considered by the petitioners to interpret to say that the Authority can consider to grant waiver, unless there is power vested with the Statutory Authority to do certain things, so it cannot be done.

(xi). Section 48 gives power to the Authority to frame Scale of Rates for services performed by Board or other person. The Petitioner should convince the Authority as to how they could approach Hon'ble Authority for grant of certain relief. What are powers given statutorily to the Authority to grant reliefs and its jurisdiction to exercise such powers?

(xii). The Chapter 6 of the MPT Act. 1963 does not give any authority or jurisdiction to the Authority to grant waiver or remission of the storage charges by any of the Statutory Custodian, let it be either Port Trust, or a Private Terminal or any other person carrying out the activities given under Section 42(3) of the MPT Act, 1963.

(xiii). As per Sections 49 (a), 49 (b), 50 of the MPT Act, 1963, the jurisdiction to consider and grant scale of rates or revision of past orders passed by the Authority is confined to the provisions set out in Chapter 6 of the MPT Act., 1963.

[Member (F): CCTPL may make their Augments on the merits of the case instead of the legality. Since the matter has been referred by the Hon'ble High Court, we have to look into the matter, whatever the orders we give is subject to the order of the High Court.]

(xiv). This was one container; the shipper is a party in Bangalore called A.J.K Exporters and what was declared in the shipping Bill, Bill of Lading and other shipping documents is that it contains Handicraft items of Clay. But with the prior information, the DRI intercepted the containers on 14.2.2007 and it was found to contain 472 bags of red sandal wood with a value of ₹ 26.43 lakhs. Export of Red Sandal woods is a prohibited item, as a consequence of that, the container was seized under Section 110 of the Customs Act.

(xv). Adjudication proceeding was held by Customs Department and the petitioner was also made a party to that apart from shipper of the cargo including transporter etc. By the Order dated 30 April 2010, the Joint Commissioner of Customs passed on order dropping the proceeding against the Trans Asia and the container was directed to be released. Thereafter, the petitioner approached CCTPL for release of the container. As on 29.7.2010, there was a sum of ₹.12.59 lakhs due towards storage charges. As per the provision of the MPT Act, 1963 and Concession Agreement, we have to collect such amount and a share a certain percentage to the CHPT. The petitioner has also made a request to CHPT to waive the Port share of Royalty, which was not considered by Port.

(xvi). Para 5.8.3. of the Tariff Guidelines, 2005, deals with the container storage charges, [Mr Ragunathan reads the para]

(xvii). Para no. 5.8.3 (iv), specifically deals such a situation of container seized/confiscated by the Custom Authorities. If the Container is not removed with 75 days, the Container Lines continue to be liable even if it removed, it will have to meet the cost of transportation and cost of destuffing. That is a case when consignee does not come forward to clear the cargo or shipper, or in the case where customs confiscated the cargo, the owner of the consignment does not come forward to remove the cargo or cannot remove the cargo, it is responsibility of the Container Lines to ensure that the cargo is removed and the cost of de-stuffing is met by the Container line and also bear the storage charges upto the date of actual removal either from the terminal or where it is shifted to CFS/ Customs Bonded Area.

(xviii). With regard to Hon'ble Supreme Court Order, the petitioner is requested to give the citation of the order, name of the case and date of order to be referred by us.

[Trans Asia: The citation of the Supreme Court is Civil Appeal no 2525 of 2018 dated 5 August 2020. The Ratio was in Para no. 24 of the order, the Parties: Chaiman, Board of Trustees, Cochin Port Trust – Appellant vs. Arebee Star Maritime Agencies Pvt. Ltd and others- Respondent.]

(xix). The Judgement appears to be confined to the cargo and not relates to containers or containerized cargo. The referred clause of 5.8.3 of Tariff Guidelines, 2005 is directly applicable to containers. There are number of judgements from 1997 which held that it is the importers who are liable to pay demurrage charges. The Supreme Court has also held that even the cargo is detained for no fault of the importer by a detention of cargo later releasing it, in such a case also the cargo owner or the consignee are still liable to pay charges. There is also a judgement in Shree Lakshmi Steel also. We will file the written submission supported by copies of the judgements and circulate to the petitioners and the Authority within a week.

CHPT

(i). The revenue share is to be paid as per the terms and condition of the Concession Agreement. Any concession/ waiver granted by the BOT operator cannot be waived as per the terms and conditions of the Concession Agreement.

(ii). As per the merits of the case the terminal is entitled to collect the amount due as per prevailing Scale of Rates.

[Counsel on behalf of CCTPL: There has to be proportionate waiver of Revenue share in the amicable settlement]

(iii). The Traffic Department of CHPT has not come across any of such cases in the past. They are not aware of any Court Judgment relevant to this case.

Member (F), TAMP

(i). Both the Parties to submit their written submission within 10 days. Thereafter, the case will be examined further. We will take up the matter with the Hon'ble High Court seeking extension for further 10 to 12 weeks to dispose the case.

6.2. As brought out above, during the joint hearing, both the parties i.e. TASSPL and CCTPL have drawn reference to some Supreme Court Judgments in support of their respective submissions and have agreed to furnish their written submissions along with the relevant judgments within 10 to 12 days. Further, during the joint hearing, the TASSPL as well as CCTPL have also indicated their willingness to explore the option of settling the matter amicably.

6.3. In this regard, in the absence of receipt of any communication from the CCTPL and TASSPL within the prescribed timelines, both the parties were reminded vide letters dated 18 December 2020 respectively to furnish the requisite information immediately.

7.1. In response, the TASSPL vide its e-mail dated 18 December 2020 has furnished a copy of the Judgment dated 05 August 2020, passed by the Hon'ble Supreme Court in a batch of Civil Appeal Nos. 2525 to 2535 of 2018 in the matter between the COPT and M/s. Arebee Star Maritime Agencies Private Limited and Others.

7.2. From the copy of the Order, it is understood that in the Original Petition No. 21041 of 1999 relating to Arebee Star Maritime Agencies (P) Ltd. v/s. Cochin Port Trust, the question before the Hon'ble High Court of Kerala was whether the liability to pay "ground rent" on containers unloaded at Cochin Port, but not cleared by the consignees/ importers and refused to be de-stuffed by the Port, on the ground of inadequate storage space, can be imposed on the owners of the vessel/ steamer agents beyond the period of 75 days, fixed by the Tariff Authority of Major Ports [TAMP], a statutory body constituted under Section 47-A of the Major Port Trusts Act [MPT Act], 1963.

7.3. In this connection, the Division Bench of Hon'ble High Court of Kerala had pronounced a judgment dated 27 September 2011. In the said judgment, the High Court had referred to the fact that the shipping agents repeatedly requested the Port Trust to destuff the containers which were lying at the port, but that the Port Trust stated that they cannot do so for inadequacy of space. The judgment therefore held that because of the lapse on the part of the consignee on the one hand in not lifting the goods, and the Port Trust on the other in not destuffing containers, the shipping agents were caught in between, and were being made "to pay through their nose". This being the case, the impugned judgment went on to construe Sections 61 and 62 of the MPT Act, by which a Board "may", after the expiry of two months from the time when any goods passed into its custody, sell such goods under certain circumstances. The impugned judgment went on to hold that the expression "may" in the said provisions must be read as "shall", as a duty is cast on the Port Trust to get rid of the goods as soon as possible in a fact situation where the consignee does not lift such goods. Ultimately, the impugned judgment concluded as follows:

> **"***44. In the above facts and circumstances, this Court finds that, there is no rationale on the part of the Port Trust in contending that they are entitled to collect 'Ground Rent' charges in respect of containers indefinitely. The course pursued by them without causing the goods to be destuffed, despite the specific request, on the failure of the Consignee/ Importer to have it cleared and by proceeding against such goods for causing the same to be sold in the public auction, realising the funds, to be apportioned in the manner specified under Section 63, cannot but be deprecated. This Court holds that the respondent Port Trust can demand 'Ground Rent' only to a maximum period of '75 days' as specified by the Tariff Authority for Major Ports as per the relevant TAMP Orders discussed above.***"**

7.4. Aggrieved by the said Judgment, the parties have approached the Hon'ble Supreme Court. The Hon'ble Supreme Court in its judgment dated 5 August 2020 has held as follows:

> **"** ***82.*** *2 and 3 ……upto the point that the Port Trust takes charge of the goods, and gives receipt therefor, the steamer agent may be held liable for Port Trust dues in connection with services rendered qua unloading of goods, but that thereafter, the importer, owner, consignee or their agent is liable to pay demurrage charges for storage of goods.*
>
> *5 ……as to whether the Port Trust is obliged to destuff containers that are entrusted to it and return empty containers to the shipping agent, the answer is that a container which has to be returned is only a receptacle by which goods that are imported into India are transported. Considering that the container may belong either to the consignor, shipping agent, ship-owner, or to some person who has leased out the same, it would be the duty of the Port Trust to destuff every container that is entrusted to it, and return destuffed containers to any such person within as short a period as is feasible in cases where the owner/person entitled to the goods does not come forward to take delivery of the goods and destuff such containers. What should be this period is to be determined on the facts of each case, given the activities of the port, the number of vessels which berth at it, together with the volume of goods that are imported. While it does not lie in the mouth of the Port Trust to state that it has no place in which to keep goods after they are destuffed – as in the facts in the present case – yet a court may, in the facts of an individual case, look into practical difficulties faced by the Port Trust. This may lead to the "short period" in the facts of a particular case being slightly longer than in a case where a port is less frequented, and goods that are stored are lesser in number, given the amount of space in which the goods can be stored.*

83. Having answered the questions that have been posed before this Court, we do not, on the facts of this case, think that the justice of the case demands that we should interfere with the impugned High Court judgment. The steamer agents themselves did not dispute liability to pay ground rent upto 75 days before the High Court, and have admittedly paid the said charges long ago. As a matter of fact, the steamer agents paid ground rent even beyond the period of 75 days – the High Court having ordered the Appellant Port Trust to recompute the liability of the steamer agents, and return the balance to the parties concerned within two months from the date of receipt of a copy of the impugned judgment. To order a refund of ground rent paid for 75 days to the steamer agent, and direct the Board to then recover the same from the importer, consignor and/or the owner of the goods at this late stage of the proceedings would not be in the interest of justice.

84. Accordingly, we dispose of the appeals that have been filed against the impugned High Court judgment. The impugned judgment is set aside on one question of law, namely, that the expression "may" in sections 61 and 62 of the MPT Act cannot be read as "shall", subject to the caveat that as the "State" under Article 12 of the Constitution, a Port Trust must act reasonably, and attempt to sell the goods within a reasonable period from the date on which it has assumed custody of them. **"**

7.5. Subsequently, the TASSPL vide its email dated 05 January 2021 has furnished its written submissions. Apart from reiterating its submissions made in its representation dated 16 June 2011, the TASSPL has also submitted the Supreme Court decision in civil appeal No. 2525 of 2018 and made submissions connected thereto as given below:

(i). The Honourable Bench held that "after the goods are discharged and the Port Trust takes charge of the same, the demurrage / storage charges accrued for the goods would be payable by the importer, consignee, owner of the goods".

(ii). Further the Bench also held that the Port Trust is obliged to destuff the goods and return the containers within a 'short time' depending on the facts of each case, considering the activities of the Port, the vessel traffic, etc. The Port Trust is not entitled to rely upon lack of storage space for the destuffed goods as a defence. In the event the destuffed goods remain uncleared by the owner of the goods or any person entitled thereto within the prescribed time for their clearance and/ or dues to the Port Trust remain unpaid, the Port Trust may sell such goods after expiry of the prescribed time period. In this regard, the Port Trust must act reasonably and attempt to sell the goods within a reasonable period of time from the date on which it has assumed custody of the goods. Amounts received towards sale proceeds shall be adjusted towards such charges.

(iii). Hence the judgment resolves the long - standing issue pertaining to steamer agent's liability towards ground rent levied by the Port Trust for uncleared goods. It provides respite to the ship owners and steamer agents who were saddled with liability towards ground rent levied by Major Ports for uncleared cargo. Thus, the Apex Court has brought in clarity on the long disputed question as to who is to pay storage charges in case if the goods are not cleared by the consignee/ importer and has without leaving room for any ambiguity made it clear that once goods are stored in the premises of the Port, they have a nexus only with the owner of the goods or other persons entitled thereto and not the steamer agent/ container lines. The Court has absolved vessel owner/ shipping agents from paying the storage and other related charges that relate to abandonment of the cargo entrusted with the custodian. As per the judgment, it is the importer/ owner of the goods/ consignee or their agent who is liable to pay such charges being the owner of the cargo.

(iv). Further the Apex court has also held that, a container which has to be returned is only a receptacle by which goods that are imported into India are transported. Considering that the container may belong either to the consignor, shipping agent, ship-owner, or to some person who has leased out the same, it would be the duty of the Port Trust to destuff every container that is entrusted to it, and return destuffed containers to any such person within as short a period as is feasible, the outer limit of which is laid down by the Honourable Supreme Court as 4 (Four) months from the date of landing of the cargo, in cases where the owner/ person entitled to the goods does not come forward to take delivery of the goods and destuff such containers.

(v). The Hon'ble Supreme Court considered the Major Port Trusts Act, 1963 (MPT) and the Customs Act, 1962 ("Customs Act") thoroughly in arriving at its decision. This provides much needed clarification on the issue of the shipowners' and agents' liability to the Port for storage charges.

(vi). The above judgment in The Chairman, Board of Trustees, Cochin Port Trust v. M/s Arebee Star Maritime Agencies Private Ltd. & Ors., has conclusively determined that shipowners and agents are not liable for storage charges imposed by the Port in respect of abandoned/unclaimed cargo, where the cargo has been placed in the Port's custody.

(vii). These findings affirm the position that once the goods are delivered into the custody of the Port and a receipt is obtained from the Port, the Port cannot then look to the ship-owner/ vessel agent/ steamer agent for any charges related to the goods. Thus, goods that are stored on the premises of the Board have a nexus only with the owner or other persons entitled to those goods, and not with the container lines.

(viii). Therefore, CHPT and CCTPL are cast with the duty to "destuff cargo " from the container and return the container back to TASSPL/ container line immediately without debiting TASSPL any charges as alleged.

(ix). It is submitted that TASSPL as a carrier cannot be held liable for the Storage charges and the deduction in the head of Storage charges is totally illegal and violation of the law of the land, statutory rules and regulations.

(x). Considering the above facts and grounds that –

(a). The TAMP scale of rates is applicable only in the case of long idling Containers not confiscated or Undergoing Customs Proceedings, and the same is only to be paid by actual owner of the cargo and not the container line. Therefore, levying charges against Container No RWAU2408198 idling in the port for the purpose of DRI investigation is illegal, since the Container was kept in the Yard in order to comply with the process of DRI investigation. As per the Law of the Land, TASSPL is bound to abide and facilitate ourselves for any statutory investigation.

(b). TASSPL as a carrier cannot be held liable for the storage charges and the present demand in the head of storage charges is totally illegal and in violation of statutory rules and regulations.

(c). The CCTPL ought to have found that Customs has confiscated not the Container but the Cargo stuffed in the Container.

(d). Complying with the Honourable Supreme Court decision in Civil Appeal No.2525 of 2018,

TAMP is humbly requested to kindly declare that the demand made by CCTPL is illegal and direct the CCTPL to release the Container bearing No RWAU2408198 forthwith and waive off the entire amounts/ charges levied on TASSPL.

8.1. The CCTPL has also vide its e-mail dated 24 December 2020 furnished its written submissions and has also furnished a copy of the judgment dated 27 July 2017 issued by Hon'ble Supreme Court in Civil Appeal No. 9831-32 of 2017 in the matter between the Mumbai Port Trust (MBPT) and M/s. Shri Lakshmi Steels and Others.

8.2. The CCTPL in its above referred email has informed that although the CCTPL through their Advocates approached TASSPL for an amicable settlement, they were disinclined to consider amicable settlement but insisted on delivery of the container without payment of charges demanded.

8.3. The written submissions made by CCTPL are as follows:

(i). The TASSPL had filed a Memorandum dated 16th June, 2011 before this Hon'ble Authority challenging the levy of ground rent/ container storage charges by the CCTPL in respect of the container bearing No.RWAU 2408198.

(ii). It was declared that the said container was stuffed with Handicraft Items made of Clay. However, when the Officers of the Directorate of Revenue Intelligence intercepted the truck carrying the said container and upon opening of the said container, it was found to contain 472 logs of red sanders which is a cargo prohibited for export. The container with the cargo was seized by DRI on 14.2.2007 and was kept lying in their hold in the port premises for further investigation.

(iii). Thereafter, adjudication proceedings were initiated by the Customs Department and an order was passed on 30.4.2010 by the Joint Commissioner of Customs, Trichy by which, besides confiscation of the cargo of red sanders, penalty was also imposed on a number of parties. The adjudication proceedings against the TASSPL were dropped and the container was directed to be released to the TASSPL.

(iv). In the meantime, owing to the fact that the cargo of red sanders and later the said container were lying with CCTPL and as contemplated under the Scale of rates, CCTPL had levied and demanded payment of storage charges from the TASSPL.

(v). The TASSPL however made a representation to CCTPL and to CHPT requesting for waiver of the container storage charges on account of the fact that the container was orders to be released by the Customs Department and that the detention of the cargo and the container was not due to any fault or lack of diligence on the part of TASSPL.

(vi). However, since CCTPL was entitled to demand payment of the container storage charges and its removal from its premises, in terms of a para 3.12.11 of Scale of Rates framed by TAMP read with Clause No.5.8.3 of the 2005 guidelines, the CCTPL rejected the request for the waiver made by the TASSPL.

(vii). The TASSPL had thereafter made a representation before TAMP on 3.12.2011. Finding that there was no response, the TASSPL filed W.P.No.11020 of 2012 in the Hon'ble Madras High Court.

(viii). The CCTPL contested the said Writ Petition on the basis of the Scale of Rates and the 2005 guidelines issued by TAMP, besides on the ground that the Major Port Trust Act by which TAMP was constituted, did not provide for an Appellate remedy before TAMP.

(ix). The Writ Petition was disposed of by an order dated 13.2.2020 by which TAMP was directed to "dispose of the Appeal dated 16.6.2011 filed by TASSPL and <u>pass final orders on merits and in accordance with law"</u>, after affording sufficient opportunity to all the Parties to the Writ Petition.

(x). Pursuant to such directions, TAMP granted a hearing through Video Conferencing on 1.12.2020, wherein CCTPL's Legal Counsel had made oral submissions before TAMP.

(xi). **<u>Maintainability of the Representation/ "Appeal" –</u>**

The CCTPL submits that TAMP was constituted by introducing Chapter V A to the Major Port Trust Act. Therefore, TAMP derives its jurisdiction only from the said chapter which contains Section 47A to 47H of the Major Port Trust Act. Pursuant to its Constitution, TAMP derives its power and jurisdiction to frame a Scale of Rates for any of charges to be collected by either the Major Ports in the country or by any other person, like the CCTPL authorized under Section 42 of the Major Port Trust Act to render certain services, and statement of conditions under which such services are to be performed by the Major Ports or such other person.

The provisions contained in the said Act relating the power, authority and jurisdiction to be executed by TAMP do not provide for an Appeal being preferred by any person aggrieved by the levy or demand made for charges, in respect of services rendered. Therefore, TAMP, being a creation of a statute, would not go beyond what has been prescribed by the statute under which it is constituted. Therefore, it is respectfully submitted that the TASSPL is not entitled to either make a representation or "Appeal" by whatever nomenclature it is called.

It is no doubt true that the Hon'ble Madras Court by its order dated 13.2.2020 had passed a direction to TAMP to consider the representation dated 16.6.2011 made by the TASSPL but the said direction is qualified by directing that the order is to be passed by TAMP "on merits and in accordance with law". Such a direction cannot be construed by TASSPL to mean that the Hon'ble Court had vested jurisdiction with TAMP to entertain an Appeal and sit in judgment over the levy of container storage charges by a Statutory Custodian like the CCTPL.

In other words, while under Section 48 of the said Act, TAMP is entitled to notify the charges to be levied by the Major Ports and such other persons and also set out certain conditions under which such charges could be collected, the jurisdiction to grant waiver of such charges has not been vested with TAMP. Consequently, the TASSPL will not be entitled to seek a direction from TAMP for waiver of the storage charges.

(xii). **<u>Liability of TASSPL to pay under 2005 guidelines of TAMP –</u>**

The CCTPL submits that as stated above, TAMP has not only notified the Scale of rates but has also issued guidelines from time to time. Under Clause No.5.8.3 (iv) of the 2005 guidelines, in respect of abandoned containers or containers in respect of which adjudication proceedings were initiated by the Customs Department and later on ordered to be released, the container lines or their Agent are liable to pay the storage charges until the containers are removed from the premises of the Terminal Operator like this Respondent. For easy reference, the relevant portion of the 2005 guidelines is reproduced below:

"*Where the container is seized/ confiscated by the Custom Authorities and the same cannot be destuffed within the prescribed time limit of 75 days, the storage charges will cease to apply from the date the Customs order release of the cargo subject to lines observing the necessary formalities and bearing the cost of transportation and destuffing. Otherwise, seized/ confiscated containers should be removed by the Lines/ consignee from the port premises to the Customs bonded area and in that case, the storage charge shall cease to apply from the date of such removal".*

It would thus be clear from the relevant provision of the Scale of Rates that CCTPL would be liable to statutorily demand and recover storage charges, which includes royalty share of CHPT, from the Container line until it is actually removed from the

Terminal and notwithstanding the fact that the Adjudicating Authority under the Customs Act had permitted the release of the Container from the detention.

(xiii). **Hon'ble Supreme Court Judgments on the liability of the TASSPL –**
During the hearing, the representative of TASSPL relied on a judgment of the Hon'ble Supreme Court dated 05.08.2020 in Civil Appeal No.2525 of 2018 in the case of Cochin Port Trust vs. Arbee Star Maritime Agencies Pvt. Ltd. and others and contended that so far as the demurrage or ground rent charges are concerned, it was only the cargo interests like the shipper or the receiver, who alone will be liable to pay such charges.

However, it is respectfully submitted that while the said judgment is an authority for the proposition that the liability for payment of storage charges or demurrage charges in respect of the cargo is always on the Importer and the container line or a carrier cannot be held liable, however, in the said Judgment, the Hon'ble Supreme Court had made a distinction between containers which are landed and are to be destuffed by the Port Authority, in so far as container belonging to or leased by a container line, if the cargo stuffed in the said container is seized by the Customs Department, the container line will be liable for payment of storage charges for the container and the cargo until they are removed. (See Para 82 (5) of the said judgment).

In this regard, CCTPL places reliance on an earlier judgment of the Hon'ble Supreme Court reported in CDJ 2017 SCC Page 859 in the case of Mumbai Port Trust Vs Shri Lakshmi Steels wherein the Hon'ble Supreme Court has clearly held the container line liable for payment of storage charges. In fact, the said judgment has even referred to Regulation 6 (i)(l) of the Handling of Cargo in Customs Area Regulation 2009 by which the Customs Department had directed the carrier or the container line to waive charges, on the basis that the Customs Act does not provide for the Department to direct waiver of storage or demurrage charges. (See Paragraph 23 and 47 of the judgment.)

Therefore, the Scale of Rates and the guidelines issued by TAMP would be the only basis on which the levy of container storage charges or detention charges would be determined. When the Scale of Rates or the Major Port Trust Act does not contemplate the grant of waiver of such charges, the TASSPL will not be entitled to any relief before TAMP, as sought for.

(xiv). It is therefore prayed that TAMP may be pleased to dismiss the above representation/"Appeal" and maintainability and thus render justice.

8.4. The operative portion of the judgment passed by the Supreme Court, as referred by CCTPL in its submissions are as follows:

"*46. We are, therefore, clearly of the view that even though there may be some delay on the part of the DRI and the customs authorities, the respondent-importers have also been guilty of delaying the matter and, therefore, they cannot claim that they are not liable to pay demurrage and detention charges. We may, however, clarify that the respondent-importers are free to approach the Mumbai Port Trust in terms of Section 53 of the Act for exemption and remission of demurrage and other charges and the Board may take a sympathetic view while considering the case of the respondent-importers under Section 53.*

47. As far as detention charges of the Shipping Line are concerned, in addition to what we have observed above, we are of the view that the High Court could not in writ proceedings have directed the DRI/Customs to pay the detention charges to the Shipping Line since these were to be paid on the basis of a contract between the respondent-importers and the shipping line.

In view of the above discussion, the appeals are allowed. The judgment of the High Court is set aside and the writ petitions filed by the respondent-importers are dismissed. No order as to costs. Pending application(s), if any, stand(s) disposed of."

9.1. A copy each of the written submissions made by TASSPL and the copy of the Supreme Court judgment referred by TASSPL was forwarded to the CCTPL vide letter dated 07 January 2021 seeking its comments. Likewise, a copy each of the written submissions made by CCTPL and the copy of the Supreme Court judgment referred by CCTPL was forwarded to the TASSPL vide letter dated 07 January 2021 seeking its comments.

9.2. In this regard, the CCTPL vide its email dated 13 January 2020 has responded to the written submissions of TASSPL dated 5 January 2021. The response of CCTPL is as follows:

(i). The CCTPL denies all the allegations contained therein and reiterates the contents of its Written Submissions dated 24 December 2020, which may be read as a part and parcel of this Counter.

(ii). At the risk of repetition, it is submitted that Clause No.5.8.3 (iv) of the 2005 guidelines, which has been issued in respect of abandoned containers or containers in respect of which adjudication proceedings were initiated by the Customs Department and later on ordered to be released, the container lines or their Agent are liable to pay the storage charges until the containers are removed from the premises of the Terminal Operator like CCTPL.

(iii). The TASSPL has relied upon the recent Judgment of the Hon'ble Supreme Court dated 05.08.2020 in the case of Cochin Port Trust vs. Arbee Star Maritime Agencies Pvt. Ltd. and others and had while extracting the relevant portion of the said Judgment, has represented that, upon the goods being discharged and the Port Trust takes charge of the same, the demurrage/ storage charges accrued for the goods would be payable by the importer, consignee or the owner of the goods. While so doing, it is the contention of the TASSPL that, the long - standing issue that remained to be decided pertaining to steamer agent's liability towards ground rent levied by the Port Trust for uncleared goods, has been clarified to the relief of the ship owners and steamer agents.

(iv). In this regard, it is submitted that there exists a distinction between the liability for payment of storage charges or demurrage charges in respect of the cargo and that of a container. In cases where the question revolves upon payment of charges for the cargo is concerned, it may be so that the Importer or a carrier/ container line cannot be fastened with such liability. Per contra, it is to be noted that, in cases where the charges arise on account of storage of a container, it is certainly the container line or its Agent who would be liable to pay such charges to the Container Terminal and the Container Terminal cannot be held liable in this regard. Hence, the said Judgment shall not be applicable to the circumstances of this case where storage charges are in respect of the container, and the reference to which precedent misplaced.

(v). The CCTPL places reliance on the judgment of the Hon'ble Supreme Court which has been reported in CDJ 2017 SCC 3 Page 859 namely, Mumbai Port Trust vs Shri Lakshmi Steels wherein the Hon'ble Supreme Court has categorically set out that it is the container line that shall be liable towards payment of container storage charges. There has been a clear reference to Regulation 6 (i) (l) of the Handling of Cargo in Customs Area Regulation 2009, in the said Judgment, placing reliance on which, the Customs Department had directed the carrier or the container line to waive charges, on the basis that the Customs Act does not provide for the Department to direct waiver of storage or demurrage charges. Considering that the Container belongs to the container line, irrespective of whether it is owned by them or not, the Carrier as the owner of the container shall be liable to pay the amounts towards storage charges.

(vi). Thus, it is reiterated that the Scale of Rates and the guidelines issued by TAMP shall be the primary basis on which the levy of container storage charges or detention charges would be determined. Therefore, in the absence of any provision being contemplated under the Scale of Rates or the Major Port Trust Act for the grant of waiver of such charges, the TASSPL shall not be entitled for such relief before TAMP.

9.3. Similarly, the TASSPL vide its email dated 14 January 2021 has responded to the written submissions of CCTPL dated 24 December 2020. The response of TASSPL is as follows:

(i). With regard to the contention of CCTPL on the maintainability of the Representation/ "Appeal" before TAMP, it is submitted that TASSPL was constrained to approach TAMP due to levy of exorbitant charges for no fault of TASSPL.

(ii). Also, this contention has been made by the CCTPL, in order to justify their actions without any factual or legal consideration and to further absolve themselves from scrutiny from any adjudicatory body. The CCTPL cannot in its discretion demand storage charges, when the containers are held by governmental authority and not due to long idling. As per the Apex court judgment on the Storage charges, it is observed by the Hon'ble Supreme Court that:

"*Once the goods are handed over to the Port Trust by the steamer and the steamer agents have duly endorsed the bill of lading or issued the delivery order, their obligation to deliver the goods personally to the owner or the endorsee comes to an end. Even though the consignee is not a party to the contract of carriage once the property in the goods had passed to him, he becomes liable to pay the storage or demurrage charges as owner of the goods to the shipowner." This Court also agreed with the conclusion of the High Court that the provisions of the MPT Act cannot be so construed as to hold that the steamer agent has undertaken the responsibility for the safety of the goods till they are cleared by Customs and taken delivery of by the consignee.***"**

(iii). Also, TASSPL has rightfully approached the High Court vide Writ Petition No. 11020 of 2012 for the enforcement of its legal rights, since the matter was pending before TAMP for a considerable period of time.

(iv). Under Article 226 of the Constitution, the High Court is within its right to issue directions, orders or writs to any person or authority for the enforcement of fundamental rights or for any other purpose. Therefore, TAMP is required to comply with the same, in order to expeditiously dispose TASSPL's appeal meritoriously.

(v). Furthermore, the CCTPL has made the contention with regard to Liability of the Petitioner to pay under the 2005 guidelines of TAMP. In this regard, it is necessary to reiterate that TASSPL had been prevented from carrying out its obligations in pursuance of the above-mentioned guidelines, owing to the fact that CCTPL has refused to release TASSPL's container. Instead the container was detained for a longer time than necessary by CCTPL to extort improper storage charges from TASSPL.

(vi). In this regard, it is necessary to reiterate that TASSPL had obtained permission from the Commissioner of Customs to release our container, since it was not a part of the Customs investigation. Despite this order, the container was not released by CCTPL. Thereafter, TASSPL had produced an order before CCTPL from the Commissioner of Customs exonerating TASSPL from all the proceedings and with a direction to release the Container without further delay. Though this order was produced, CCTL had refused to release the container without the payment of storage charges upfront.

(vii). It is submitted that the container RWAU2408198 was held not for the fault of TASSPL but for the Customs proceedings. Therefore, levying charges against Container No RWAU2408198 idling in the port for the purpose of DRI investigation was illegal on the part of CCTPL. Further, it is also to be noted that, that as per the circular vide no 84/95 dated 25-7-1995 bearing No 450/61/93 issued by the Central Board of Excise and Custom (Department of Revenue, Ministry of Finance, Govt of India), it is declared and clarified that detention by any authority for long periods under the guise of investigation is unfair and cumbersome for container agents.

(viii). Based on the above submission read along with the latest judgment of Hon'ble Supreme Court, The Chairman, Board of Trustees, Cochin Port Trust v. M/s Arebee Star Maritime Agencies Private Ltd. & Ors. - Civil Appeal No.2525 of 2018, the contention put forward by CCTPL will not stand in the eyes of law.

(ix). The CCTPL have made submissions with regard to the Supreme Court judgments on the liability of TASSPL. It is necessary to submit that these contentions made by CCTPL are baseless and incorrect. The CCTPL has relied on the case of Mumbai Port Trust Vs. Shri Lakshmi Steels to submit that the container line is liable for payment of storage charges;

(a). Firstly, it is submitted that the judgment does not in any manner conclusively hold that the container line is liable for payment of storage charges as submitted by the Respondents.

(b). The CCTPL have relied on paragraph 47 of the judgment in which, the Supreme Court has held that the DRI/ Customs cannot be directed to pay detention charges to the Shipping Line by the High Court. Further, it also held that payment of storage charge would be based on contracts entered into between the importer and the shipping line. Therefore, there is no conclusive determination whatsoever, with regard to the liability of the shipping line in this paragraph, as submitted by the respondents.

(c). Secondly, under paragraph 23, this judgment has held that the authority created under statute, such as the Port Trust are entitled to charge demurrage for the imported goods in its custody, and make the importer or consignee liable for the same. Therefore, the holding in the judgment should not be construed by the Respondents, to mean that the Port Trust is entitled to charge storage and other charges from the container line, since it clearly specifies the importer and consignee as the liable parties.

(x). In addition, the CCTPL have made baseless submissions with regard to Supreme Court judgment of The Chairman, Board of Trustees, Cochin Port Trust v. M/s Arebee Star Maritime Agencies Private Ltd. & Ors. - Civil Appeal No.2525 of 2018 (dated 05/05/2020) in Para 82(5), which are interpreted wrongly by the Respondents. It is necessary to reiterate that The Honorable Bench in the above judgment had held that "after the goods are discharged and the Port Trust takes charge of the same, the demurrage/ storage charges accrued for the goods would be payable by the importer, consignee, owner of the goods".

(xi). Further the Bench has also held that the Port Trust is obliged to destuff the goods and return the containers within a 'short time' depending on the facts of each case, considering the activities of the Port, the vessel traffic, etc. The Port Trust is not entitled to rely upon lack of storage space for the destuffed goods as a defence. In the event the destuffed goods remain uncleared by the owner of the goods or any person entitled thereto within the prescribed time for their clearance and/ or dues to the Port Trust remain unpaid, the Port Trust may sell such goods after expiry of the prescribed time period. In this regard, the Port Trust must act reasonably and attempt to sell the goods within a reasonable period of time from the date on which it has assumed custody of the goods. Amounts received towards sale proceeds shall be adjusted towards such charges.

Hence the judgment resolves the long - standing issue pertaining to steamer agent's liability towards ground rent levied by the Port Trust for uncleared goods. It provides respite to the ship owners and steamer agents who were saddled with liability towards ground rent levied by Major Ports for uncleared cargo.

(xii). Further the Apex court has also held that, a container which has to be returned is only a receptacle by which goods that are imported into India are transported. Considering that the container may belong either to the consignor, shipping agent, ship-owner, or to some person who has leased out the same, it would be the duty of the Port Trust to destuff every container that is entrusted to it, and return empty containers to any such person within as short a period as is feasible, the outer limit of which is laid down by the Honorable Supreme Court as 4 (Four) months from the date of landing of the cargo, in cases where the owner/ person entitled to the goods does not come forward to take delivery of the goods and destuff such containers.

(xiii). Thus, it is therefore prayed that TAMP may be pleased to consider the appeal of TASSPL and render justice.

10. The CCTPL vide its letter dated 25 November 2020 has, among other submissions drawn reference to a provision in the tariff guidelines and the Scale of Rates of CCTPL. Clause 5.8.3 of Tariff Guidelines, 2005, which was relevant at the material point of time for fixation of tariff of BOT operators including the CCTPL and the identical provision in the SOR of CCTPL reproduced below :

"*5.8.3. The storage charges on abandoned FCL containers/shipper owned containers shall be levied upto the date of receipt of intimation of abandonment in writing or 75 days from the day of landing of the container, whichever is earlier subject to the following conditions:*

(i). The consignee can issue a letter of abandonment at any time.

(ii). If the consignee chooses not to issue such letter of abandonment, the container Agent/MLO can also issue abandonment letter subject to the condition that,
- *(a). the Line shall resume custody of container along with cargo and either take back it or remove it from the port premises; and*
- *(b). the line shall pay all port charges accrued on the cargo and container before resuming custody of the container.*

(iii). The container Agent /MLO shall observe the necessary formalities and bear the cost of transportation and destuffing. In case of their failure to take such action within the stipulated period, the storage charge on container shall be continued to be levied till such time all necessary actions are taken by the shipping lines for destuffing the cargo.

*(iv). Where the container is seized/confiscated by the Custom Authorities and the same cannot be de-stuffed within the prescribed time limit of 75 days, the storage charges will cease to apply from the day the Custom order release of the cargo subject to lines observing the necessary formalities and bearing the cost of transportation and destuffing. Otherwise, seized/confiscated containers should be removed by the line/consignee from the port premises to the Customs bonded area and in that case the storage charge shall cease to apply from the day of such removal.***"**

11.1. In the meanwhile, and as brought out earlier, the Hon'ble High Court has disposed the subject Writ Petition filed by TASSPL on 13 February 2020. As per the Order of the Hon'ble Court, the representation of TASSPL has to be disposed within a period of twelve weeks from the date of receipt of a copy of the order of the Court. The copy of the Order of the Hon'ble High Court has been received by the office of this Authority on 21 September 2020. As such, the application filed by the TASSPL dated 16 June 2011 has to the disposed by this Authority by 13 December 2020 (i.e. 12 weeks from 21 September 2020).

11.2. In this regard, it is to state that as per Section 50C of the MPT Act, 1963, every notification, declaration, order and regulation of this Authority made in pursuance of the Act is to be published in the Official Gazette. Also, since the Order is notified in the Gazette only bilingually, the Order has to be translated in Hindi and thereafter, the Order has to be sent for notification in the Gazette of India. This was likely to take some time. Considering the time involved for the above procedures, the Office of this Authority has filed an application before the Hon'ble High Court of Madras seeking extension of additional 12 weeks' time to enable this Authority pass a reasoned Order on the matter in reference.

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

(i). The case in reference has emanated from a representation made by Trans Asian Shipping Services Private Limited (TASSPL) on 16 June 2011, representing against the levy of ground rent/ container storage charges by the Chennai Container Terminal Private Limited (CCTPL) in respect of one of its containers. Subsequently, the TASSPL approached the Hon'ble Madras High Court by its writ petition No. 11020 of 2012 praying, *inter alia*, to direct this Authority to consider its appeal dated 16 June 2011 and pass appropriate orders. Since the TASSPL had approached the Hon'ble High Court with regard to its representation in reference, the representation dated 16 June 2011 was not processed and it was decided to act as per the orders to be passed by the Hon'ble Court of Madras. The Hon'ble Madras High Court vide its Order dated 13 February 2020 has directed this Authority to dispose of the representation dated 16 June 2011 filed by TASSPL and pass final orders on merits and in accordance with law, after affording sufficient opportunity to both the petitioner as well as other parties to the appeal including granting them the right of personal hearing. Accordingly, the matter has now been taken up by this Authority.

(ii). Before proceeding to deal with the issue as raised by TASSPL, it becomes necessary to deal with the submissions made by CCTPL during the hearing held on 01 December 2020 regarding the power of this Authority to deal with the representation of TASSPL. The submission of the CCTPL is that the Major Port Trusts Act, 1963 (MPT Act) does not empower this Authority to grant waiver or remission of the storage charges as sought by the TASSPL. As such, the CCTPL is of the view that the TASSPL ought not to have sought any relief from this Authority by making a representation to this Authority.

The jurisdiction of this Authority can be said to be clearly stipulated by the provisions of Sections 48, 49 and 50 of the Major Port Trusts Act, 1963. The pith and substance of these provisions is that this Authority can prescribe:

(i). A Scale of Rates at which, a statement of conditions under which, any of the services specified shall be performed; and,

(ii). A Scale of Rates on payment of which, and a statement of conditions under which, any property belonging to or in possession or in occupation of the Board is used.

There is nothing in these provisions to suggest that a Scale of Rates can only be seen as a comprehensive Tariff Book notifying rates.

These provisions cannot be narrowly interpreted to confine its role as being only to prescribe rates for Port Trusts and the BOT Terminals operating thereat. There can be genuine grievances voiced by users / representative bodies of users. An Authority enjoined with a statutory duty as described above cannot leave such grievances unlooked. The mere act of framing Scale of Rates will have very little meaning if it is not accompanied by effective monitoring of its application/ implementation. This Authority is statutorily duty bound to entertain and redress disputes about interpretation/ application/ implementation of the tariffs prescribed, particularly when a Court of Law has directed this Authority to dispose of the representation of TASSPL and pass final orders on merits and in accordance with law.

The Hon'ble High Court itself has referred the matter to this Authority for passing final orders on the matter. Given that the matter has now been referred by the Hon'ble Court, it is not appropriate for this Authority to refuse to examine the representation of TASSPL.

In this connection, reference is drawn to an Order no. TAMP/5/2015-CHPT dated 15 January 2016, wherein in compliance of an Order dated 08 October 2014 passed by the Hon'ble High Court of Madras, this Authority had decided the issue of extent of revision of Container storage charges at the Chennai Port Trust (CHPT) for the period from 6 July 1994 to August 2001, even though this Authority was constituted in April 1997. In other words, having regard to the Order of the Hon'ble Court, this Authority had decided the matter, even though a portion of the period (for which the storage charges were to be reviewed) fell prior to the constitution of this Authority.

(iii). In compliance to the Order of the Hon'ble High Court, this Authority initiated consultation proceedings with all the parties of the Writ Petition and also accorded personal hearing to the parties on 01 December 2020. Based on the totality of information collected during the processing of the case, the matter is decided as discussed in the succeeding paragraphs.

(iv). The Hon'ble Madras High Court vide its Order dated 13 February 2020 has directed this Authority to dispose of the representation dated 16 June 2011 filed by TASSPL. In its representation dated 16 June 2011, the TASSPL had made the following prayers before this Authority viz. –

(a). Declare that the demand made by CCTPL is illegal.
(b). Direct CCTPL to release the container bearing no. RWAU2408198 forthwith.

Vide the above said representation, the TASSPL had also made the following interim prayers before this Authority viz. –

(a). Grant an opportunity of being heard in the matter.
(b). Direct CCTPL to release the container bearing no. RWAU2408198 forthwith.

Thus, as directed by the Hon'ble Court, the matter has been taken up now to deal with the above said prayers made by TASSPL.

(v). The representation of TASSPL arises due to the claim of demurrage/ storage charges by the CCTPL in respect of one of its containers belonging to TASSPL. From the facts of the case as brought out by the parties, it is understood that one Container bearing No. RWAU 2408198 belonging to TASSPL was booked by M/s. ACS Shipping (P) Ltd. for Export Shipment of Handicraft Items in February 2007. The subject container was intercepted by the Directorate of Revenue Intelligence (DRI) on suspicious grounds. Upon inspection, the container is reported to have contained 'Red Sanders', which has been prohibited from being exported. The container along with the cargo was seized by the DRI and kept on hold in the premises of CCTPL for further investigation. It is further understood that when the Customs Department permitted the de-stuffing of the cargo and provisional release of the Container on 23 October 2009, the TASSPL approached CCTPL by its letter dated 26 October 2009 for release of the container. The CCTPL, however, demanded demurrage/ storage charges from the TASSPL for the period the

Container lay in the CCTPL premises. Thereafter, when the Customs exonerated TASSPL from all the proceedings with a direction to release the Container in March 2010, the TASSPL approached CCTPL for release of the container. The CCTPL, however, has refused to release the container without the payment of storage charges upfront. Thus, till now i.e. even after 14 years (from the time the container was initially intercepted by the DRI), the Container continues to be in the CCTPL premises. It is based on the above facts, that the TASSPL in its representation has requested this Authority to declare that the demand made by CCTPL is illegal and to direct the CCTPL to release the container bearing no. RWAU2408198 forthwith.

(vi). In this regard, it is to state that Section 48 of the MPT Act, empowers the Major Port Trust or any other person authorized by the Major Port Trust under Section 42(3) of the MPT Act to levy charges for the services listed at Section 48. The CCTPL is a BOT Operator, who has been authorized by the CHPT under Section 42(3) of the MPT Act. One of the services listed under Section 48 is storage or demurrage of goods on any such place within the limits of the port or port approaches. Thus, in terms of Section 48 of the MPT Act, the CCTPL is entitled to demand payment of demurrage charges according to its scale of rates framed thereunder.

(vii). The TASSPL in its representation has argued that the Scale of Rates of CCTPL is applicable only incase of long idling containers and not on containers which are confiscated or undergoing custom proceeding. In this regard, reference is drawn to Section 3.12.8 (iv) of the then prevailing SOR of CCTPL, which states that where the container is seized/ confiscated by the Custom Authorities and the same cannot be de-stuffed within the prescribed time limit of 75 days, the storage charges will cease to apply from the day the Custom order release of the cargo subject to lines observing the necessary formalities and bearing the cost of transportation and de-stuffing. Otherwise, seized/ confiscated containers should be removed by the line/ consignee from the port premises to the Customs bonded area and in that case the storage charge shall cease to apply from the day of such removal. Thus, the statement made by TASSPL is incorrect as the said provision in the then prevailing Scale of Rates of CCTPL clearly indicates the levy of storage charges on the containers which have been seized or confiscated by the Custom authorities. Further, as per Section 3.12.1 of the then prevailing SOR of CCTPL, the Storage period for a container shall be reckoned from the day following the day of landing upto the day of loading/ delivery/ removal of container. Thus, based on the above provisions in its Scale of Rates, the demand for storage charges made by CCTPL cannot be termed illegal, as alleged by the TASSPL.

(viii). Based on the above said prescription in the Scale of Rates of CCTPL, the TASSPL is liable to pay the storage/ demurrage charges, to CCTPL till the date the TASSPL communicated to CCTPL regarding DRI passing order for the provisional release of the Container i.e. 26 October 2009, as per Section 3.12.8 (iv) of the then prevailing SOR of CCTPL. In an ideal situation, the TASSPL, keeping in view the above referred provision in the Scale of Rates, ought to have paid the storage upto 26 October 2009 calculated as per its Scale of Rates under protest and ought to have shifted the Container from the CCTPL premises in October 2009 itself (when the DRI had passed Order for provisional release of the Container). Subsequently, it could have taken a legal recourse, if it had so desired, seeking refund of the amount of storage charges paid to CCTPL on the confiscated/ seized containers. Under these circumstances, the stand taken by the TASSPL that it will take away the container only if the demurrage accrued is waived off by CCTPL, appears to be incorrect.

(ix). The TASSPL in its representation has brought out that it was not at all involved in the offence under the DRI investigation and that the DRI had exonerated them and had ordered the final release of the Container. The TASSPL has also referred to a Circular no. 84/95 dated 25 July 1995 issued by the Central Board of Excise and Customs, wherein it is reported to clarify that the detention by any authority for long periods under the guise of investigation is unfair and cumbersome for container agents. The TASSPL has stated that inspite of highlighting the said Circular to CCTPL, the CCTPL had insisted on payment of storage charges by TASSPL before release of the container.

In this regard, as already brought out earlier, in terms of Section 48 of the MPT Act, and the approved SOR, the CCTPL is entitled to demand payment of demurrage charges according to its scale of rates framed thereunder. It is noteworthy that the Circular issued by the Central Board of Excise and Customs, as referred above by TASSPL, is in the nature of an administrative communication. There can be no iota of doubt that the administrative communication cannot in any manner override the power and authority of CCTPL to levy storage charges, as legally vested in it under the MPT Act and approved SOR.

(x). There is no doubt that the container was idling in the CCTPL premises for the purpose of DRI investigation which was beyond the control of TASSPL. There is also no doubt that the TASSPL had to abide and facilitate itself and was constrained to put the container in the CCTPL premises as part of the statutory investigation. However, it has to be borne in mind that there is no justification for ignoring the fact that both CCTPL and DRI are separate legal and financial entities and as such CCTPL cannot stand responsible for acts of commission/ omission, if any, of other arms of the Government. As has been argued by the CCTPL, the container in reference continues to occupy revenue earning space inside the CCTPL premises and that being so, the CCTPL is justified in demanding storage charges.

(xi). The TASSPL in its submissions has also stated that as per Section 2 (o) (i) of the MPT Act, ‘owner in relation to goods, includes any consignor, consignee, shipper or agent for the sale, custody, loading or unloading of such goods. Thus, the TASSPL is of the view that as per the said definition, the Carrier/ Line will not come within the definition of ‘Owner’ in relation to the goods and as such they cannot be held liable for the storage charges on the cargo undergoing confiscation proceedings. In this regard, it is noted that though the cargo inside the container was confiscated, the container continued to occupy the CCTPL premises, for which the CCTPL is authorized to levy the storage charges as per its Scale of Rates, on the Container so occupying its premises.

(xii). The TASSPL as well as CCTPL have referred to few of the Orders/ Judgments passed by the Hon’ble Supreme Court in some matters. In this connection, it is to state that the facts of the case as referred in the abovesaid various Orders/ Judgments passed by the Hon’ble Supreme Court are not found to be similar to the facts of the present case in reference. However, reference is drawn to an Order dated 12 August 2002 passed by this Authority, which has been notified in the Gazette of India on 27 August 2002 vide Gazette no. 171, vide which this Authority has dealt with a representation received from M/s. Redeagle Maritime Services (I) Private Limited (RMSPL) about waiver of demurrage charges raised by the Syama Prasad Mookherjee Port (SPMP) [erstwhile Kolkata Port Trust (KOPT)] in respect of a container detained by the Kolkata Customs Authority (KCA). Vide the said Order, this Authority had rejected the representation of RMSPL for waiver of demurrage charges raised by SPMP for the period of detention of their container by the Customs, for the following reasons. The extracts from para 8 of the Order bringing out the reasons are reproduced below:

“*(iii). ………… The KOPT Scale of Rates prescribes levy of demurrage charges on container and cargo separately on expiry of the stipulated free period. The SOR does not specify any exemption from these charges on account of detention by the Customs. That being so, the action of the KOPT in demanding demurrage charges on the container as well as the containerised cargo for the period of the laden container occupied the Port*

Trust's yard is not outside the scope of the existing Scale of Rates; and, therefore, it cannot be called as a wrong application of the Scale of Rates.

(vii). ……… Even if the KOPT and the Customs are seen to be instrumentalities of the same Government, there is no justification for ignoring the fact that they are separate legal and financial entities. It is noteworthy that a port trust is a self-financing organisation and it cannot stand responsible for acts of commission/omission of other arms of the Govt. As has been argued by the KOPT, the container in reference continues to occupy revenue earning space inside the port premises during the period of its detention. That being so, the KOPT is justified in demanding storage charges for that period.

The KOPT has cited an order passed by the Supreme Court in a case relating to the International Airports Authority of India to justify its action to levy storage charges even during the period of detention of container/cargo by other statutory agencies. Irrespective of the Supreme Court decision, as has already been pointed out, the principle followed by this Authority is that users are not to be made responsible for delays caused by the port. In this case, it has only been argued that the delay was caused not due to the fault of the Applicant; but, it is not established that it was due to the fault of the port. That being so, there is no merit in the request of the Applicant for refund of the storage charges collected by the KOPT for the period of detention of his container by the Customs.

(viii). In the light of the analysis given in the preceding paragraphs, it is not necessary at this juncture to make any amendments to the existing Scale of Rates with reference to demurrage on container and cargo detained by the Customs.

(ix). The prayer is for waiver of demurrage charges for the period from 29 February 2000 to 13 December 2001. The Applicant has, however, made repeated requests that his case is to be decided on a priority basis since demurrage charges are accruing even now. This appears to be a request made to sensationalise the issue since the Customs have allowed on 13 December 2001 transhipment of the container. The Applicant cannot take a reasonable stand that he will clear the container only if the demurrage accrued is waived or ordered to be waived. In the absence of any interim order, it should have been for the Applicant to shift the container from the port premises even if it would have required remittance of payment to the KOPT under protest or subject to final outcome of this case. It is noteworthy that this Authority has not rendered any advice to the Applicant to keep the container in the KOPT premises beyond 13 December 2001 till settlement of this case."

(xiii). The CHPT submitted at the joint hearing held on 1 December 2020 that the CCTPL has to pay revenue share as per the terms and conditions of the Concession Agreement and any concession/ waiver granted by the CCTPL cannot be waived as per the terms and conditions of the conditions of the Concession Agreement. The CCTPL does not agree to consider any waiver in storage charges if the CHPT does not agree to waive the revenue share. Article 5.02 of the Concession Agreement entered between CCTPL and CHPT stipulates that the percentage of gross revenue earned from operations of the container terminal by levy of tariff shall be shared with the Licensor (CHPT) by the Licensee (CCTPL) shall be 37.128%. The Licensee shall pay the Licensor 37.128% of all revenue earned from operations, storage or in any other form recovered/ charged from users. Any discounting or rebating in tariff shall not affect the amount of revenue share payable by Licensee which shall be calculated on the basis of the amount fixed by the Tariff Authority for Major Ports or the actual tariff recovered/ charged for the actual throughput whichever is higher whether or not Licensee is able to recover it or not.

The TASSPL is liable to pay storage charges to the CCTPL as per the rates of storage charges prescribed in the Scale of Rates of CCTPL on the container in reference upto 26 October 2009 after admissible free dwell time (storage) period which shall commence from the time container entered the CCTPL terminal in February 2007. Since the storage charges shall cease to apply from 27 October 2009, as per the provision in the Scale of Rates, Article 5.02 shall not apply for the period from 27 October 2009 till the date the container is removed from the CCTPL premises.

13.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority disposes of the Representation dated 16 June 2011 filed by the TASSPL in the following manner:

(i). The TASSPL is liable to pay storage charges to the CCTPL as per the rates of storage charges prescribed in the Scale of Rates of CCTPL on the container bearing No.RWAU2408198 upto 26 October 2009 after admissible free dwell-time (storage) period which shall commence from the time container entered the terminal in February 2007 for export.

(ii). The storage charges shall cease to apply from 27 October 2009 till the date the container is removed from the CCTPL premises.

(iii). The CHPT is entitled for revenue share at the applicable percentage as per the License Agreement entered between the CCTPL and CHPT from the revenue earned from the storage charges on the container bearing No.RWAU2408198 leviable upto 26 October 2009.

(iv). Since storage charges shall cease to apply on the container in reference from 27 October 2009 as per the provision in the Scale of Rates, CCTPL is not liable to pay revenue share to CHPT for the container in reference from 27 October 2009 till the container is removed from the CCTPL premises as CCTPL is not entitled revenue from storage of containers from 27 October 2009.

13.2. The Appeal dated 16 June 2011 filed by the TASSPL stands disposed.

(T.S. Balasubramanian)
Member (Finance)