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TARIFF AUTHORITY FOR MAJOR PORTS

GNo.31

New Delhi,

19 January 2010

NOTIFICATION

In exercise of the powers conferred under Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal from the Jawaharlal Nehru Port Trust for fixation of charges for collection of garbage from ships calling at the JNPT container terminal and shallow water berths as in the Order appended hereto.

(Rani Jadhav)
Chairperson

Tariff Authority for Major Ports
Case No. TAMP/7/2009-JNPT

The Jawaharlal Nehru Port Trust

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Applicant

ORDER

(Passed on this 30th day of December 2009)

The Jawaharlal Nehru Port Trust (JNPT) vide its letter dated 3 February 2009 has forwarded a proposal for fixation of charges for collection of garbage from port crafts and ships calling at JNPT Container terminal (JNPCT) and Shallow Water Berths (SWB).

2.1. The main points made by JNPT are summarised below:

- (i). JNPT provides garbage reception facility to the ships and port crafts calling at the container terminal and Shallow Water Berths (SWB) operated by JNPT as per Regulation 7 (i), Annex-V of MARPOL 73/78.
- (ii). At present, JNPT by engaging the services of a private contractor collects, transports and disposes of the garbage generated by the ships and by the port crafts. This service is provided free of cost by the port.
- (iii). However, the JNPT has decided to levy a charge on the said service. Since the JNPT Scale of Rates does not prescribe a specific rate, the JNPT with effect from 15 January 2009 is levying a charge of Rs.500/- per ship/ hired port craft availing the said facility on an adhoc basis till the rate is approved and notified by TAMP, in line with Clause 2.17.2 of the tariff guidelines of 2005.
- (iv). On enquiry, Nhava Sheva International Container Terminal Limited (NSICT) has informed that they levy administrative charges of Rs.500/- per ton for garbage reception facility and charge for each instance Rs.5000/- for oily wastes (sludge oil).
- (v). As per the Waste Management Plan of Gateway Terminals India Private Limited (GTIPL), the waste reception facility is on chargeable basis on case to case basis.
- (vi). The proposed charge is a minimum charge and helps in preserving the environment.
- (vii). It is not practicable to provide costing for the said charge.

2.2. The proposal of the JNPT is to levy an amount of Rs.500/- per ship / port craft per visit for garbage collector.

3.1. In accordance with the consultative procedure prescribed, the proposal from the JNPT was forwarded to the concerned users/user organisations and Customs Department for their comments.

3.2. A copy of the comments of IMC was forwarded to the JNPT as feedback information. The JNPT has not responded on the comments of IMC.

4. On a preliminary scrutiny of the proposal, the JNPT was requested to furnish additional information / clarifications. The information sought from the JNPT and the response of the JNPT are tabulated below:

Sl. No.	Information sought by us	Reply of JNPT
(i).	The levy of the proposed charge by JNPT on an adhoc basis does not appear to be in line with Clause 2.17.1 to 2.17.4 of the 2005 tariff guidelines. As per the tariff guidelines, whenever a specific tariff	(i). The port is providing garbage collection facility as per the requirement of MARPOL under Regulation 7(1) of Annex-V. The service was free of charge to the ships upto 15.1.2009. (ii). The garbage collection and disposal at the

	for a service/ cargo is not available in the notified Scale of Rates, the port can submit a proposal and levy the rate on an adhoc basis till the rates are finally notified. For this purpose, the adhoc rate must be derived based on the existing notified tariff for comparable services/ cargo and it must be mutually agreed upon by the Port and the concerned users. In the instant case, the levy of proposed charge for collection of garbage is neither based on the existing notified tariff nor has the port produced documentary evidence to show that the proposed levy has the concurrence of the relevant users. The JNPT to clarify the position and produce documentary evidence to show that the levy of the proposed rate on an adhoc basis has the concurrence of the relevant users.	designated dumping site was being done through PAP labour co-operative society. The contract included the cleaning of 21 nos. jetty steps and collection of garbage from ships. The present contract is valid from 4.4.2009 for a period of one year, extendable for another 1 year with 5% escalation. The annual contract value is : (a). Cleaning of 21 nos. jetty steps = 21 steps X Rs.62/step/day = 4,75,230.00 (b). charges for removal and disposal of garbage from ships at JNPT berths / anchorage = Rs.1200/pm X 12 months = 1,44,000.00 (iii). The charges for collection of garbage from ships/ hired port crafts (Rs.500 + service tax per visit) is being levied from 15 January 2009. (iv). Prior to levy of charge, the garbage contractor used to collect garbage from ships / port crafts everyday from 15.1.2009. The contractor collects garbage from only those vessels which require this service, on chargeable basis. The data prior to and after levy of charge is given below: <table><tr><th colspan="2">Free service</th><th colspan="2">Chargeable service</th></tr><tr><th>Month</th><th>No. of vessels</th><th>Month</th><th>No. of vessels</th></tr><tr><td>Nov. 08</td><td>77</td><td>Feb. 09</td><td>30 (15v + 15 tugs)</td></tr><tr><td>Dec. 08</td><td>77</td><td>Mar. 09</td><td>28 (13v + 15 tugs)</td></tr></table> (v). A large number of ships were discharging garbage in JNPT, as the service was free prior to 15.1.2009. After 15.1.2009, the number of vessels utilizing the service has drastically reduced. This may be an indication that the vessels were literally dumping the garbage at JNPT. For the same reason, the neighbouring terminals (GTIPL & NSICT) may also be charging the ships for service. (vi). The contract value for garbage collection service is presently 1,44,000/-. The contract provides for escalation of 5% for the second year. In every new contract, the cost also increases. In addition, JNPT also incurs same administrative costs / overheads. From the above, data considering average 30 nos. vessels per month, the revenue collection would be Rs.1,80,000/- (30*12*500) per annum. (vii). As per MARPOL, providing reception facility for ship generated wastes is mandatory. It is learnt that every port is charging for providing reception facility. The DG Shipping has given guidelines for reception facilities for ship generated wastes vide Eng. Circular No.31&32. Clause 3.0 of Circular No.31 clearly states: "Under the polluter pays principle, the cost of providing waste reception facilities should be met from the ship operators". (viii). The fees now being levied is nominal, which is meant to act as a deterrent to dumping of garbage.	Free service		Chargeable service		Month	No. of vessels	Month	No. of vessels	Nov. 08	77	Feb. 09	30 (15v + 15 tugs)	Dec. 08	77	Mar. 09	28 (13v + 15 tugs)
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(ii).	The JNPT has mentioned, <i>interalia</i>, that Nhava Sheva International Container Terminal Limited (NSICT) and Gateway Terminals India Private Limited (GTIPL) levy charges for garbage reception facility. It is also mentioned by JNPT that the NSICT levies charges for handling sludge oil. The Scale of Rates of NSICT and GTIPL notified by this Authority vide Orders dated 30 December 2008 and 23 August 2006 respectively, do not prescribe any rate for operating garbage reception facility and handling oily wastes at the said private terminals. That being so, it is not clear as under what tariff arrangement the private terminal operators at the JNPT levy the reported charges. The JNPT is requested in its capacity as the Licensor and in discharge of its responsibility under the provisions of the Major Port Trust Act, 1963, to enquire into the matter and report as to how NSICT and GTIPL levy the said charges without approval from this Authority.																	

	(ix). Since there is no specific charge available in the notified Scale of Rates, the proposed rate can be levied on an adhoc basis till the rate is finally approved by TAMP. This is in line with the guidelines issued by TAMP under Clause 2.17.2.
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5.1. As brought out earlier, JNPT has made a mention that NSICT levies administrative charge of Rs.500/- per ton for garbage reception facility and charge for each instance Rs.5000/- for oily wastes (sludge oil). The Scale of Rates of NSICT approved in December 2008 does not prescribe any rate for garbage reception facility and oily wastes. The NSICT was, therefore, requested to clarify the position. After a reminder, the NSICT has made the following submissions:

(i). Charges for oily wastes (sludge oil)

The administrative charge is collected from the contractors to carry out the safe removal of sludge oil. NSICT facilitates safe removal and passage of sludge from ships without damaging the terminal's environment, property and safe working conditions. These recoveries are not being made from the port users but from pre-authorised vendors by JNPT who are collecting sludge oil. NSICT provides adequate supervision and security during this exercise in order to ensure safe removal. NSICT oil spill kit along with required trained staff is kept standby during these operations to tackle oil spillage, if any. Since this is an one off activity done only at the request of shipping line and cost recovered from contractor, this was not proposed to be notified.

(ii). Charges for garbage disposal

At the request of shipping lines, NSICT deploys a contractor duly authorised by the JNPT to collect and dispose the garbage at the site nominated by JNPT. The administrative charge is collected.

(iii). The amount collected was reported in actual income by NSICT in last tariff application. If the Authority believes that this needs to be incorporated in the Scale of Rates, this can be done during next tariff cycle.

5.2. The JNPT has also mentioned that as per the Waste Management Plan of GTIPL, the waste reception facility is on chargeable basis. The Scale of Rates of GTIPL approved in August 2006 does not prescribe any rate for garbage reception facility. The GTIPL was requested to clarify the position. The GTIPL has clarified the following:

(i). The Scale of Rates does not prescribe any rate for collection of garbage from ships. This activity is carried out by GTIPL on a case to case basis at the request of the customers.

(ii). This activity is more a facilitation to trade as it is necessary for them to remove the garbage before unloading / loading of containers from/ to vessels.

(iii). The frequency of carrying out this facility is very low. Trade has not raised any complaint so far to render this service and levy of a charge.

(iv). GTIPL would also include a rate for this activity in our next SOR and would seek the sanction of TAMP.

6. A joint hearing in the case was held on 27 November 2009 in the office of this Authority. The JNPT explained the proposal and mentioned that providing reception facilities for garbage collection to ship as per MARPOL is mandatory for the JNPT and the proposed tariff is based on direct cost only without any additional overhead being loaded to it. The users present at the joint hearing have unanimously endorsed the proposed rate as reasonable.

7. The proceedings relating to consultation in this case are available on records at the office of this Authority. This detail will also be made available at our website <http://tariffauthority.gov.in>

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

- (i). The MARPOL convention referred by the JNPT is an international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes. Providing reception facilities for garbage collection to ships as per MARPOL convention is mandatory for a port operator. The JNPT was arranging collection of garbage from the vessels calling at its container terminal and shallow water berths through contractor reportedly free of cost till recently. Now, the port has started to levy a charge of Rs. 500/- on ad-hoc basis with effect from 15 January 2009 and filed a proposal before this Authority for approval and notification of the rate.
- (ii). Whenever a specific tariff for a service / cargo is not available in the notified Scale of Rates, Clause 2.17.1 to 2.17.4 of the tariff guidelines of March 2005 allow a port or private terminal to submit a suitable proposal. Simultaneously, with the submission of the proposal, the port can levy the proposed charges on an ad-hoc basis till the rates are finally notified, provided the ad hoc rate is derived based on the existing notified tariff for comparable service / cargo and it is mutually agreed open by the port / terminal and the concerned users.
- (iii). In the case of JNPT, the port has started to levy the charge and filed the proposal before this Authority. The port renders this service by outsourcing the same through a contractor and it is not in a position to provide cost details for this charge. However, the JNPT has reported that the proposed rate is based on direct cost only without any additional overhead loaded on the proposed rate. With reference to the consent of the users stipulated in the guideline quoted in the preceding paragraph, the users have unanimously endorsed the proposed rate during the proceedings of this case.
- (iv). For rendering the service through a contractor, the JNPT has firmed up the contract value at Rs.1,44,000/- per annum. If it is taken as the direct cost for the port for rendering the service, the number of vessels in respect of which, this service would be provided at the Rate of Rs.500/- per vessel will be 24 vessels per month which is closer to the actual number of vessels in respect of which this service was provided after the port started to levy the charge on ad-hoc basis.
- (v). Recognizing the position confirmed by JNPT that the proposed rate is based on direct cost only without any additional overhead being loaded on the proposed rate and bearing in mind the endorsement of the users that the proposed rate is reasonable, this Authority is inclined to approve the proposed rate as such for providing the service which is mandatory as per MARPOL convention.
- (vi). As reported by it, the port has started to levy a charge of Rs.500 per ship / hired port craft availing the said facility on an ad hoc basis till the rate is notified by this Authority. Clause 2.17.4 of the tariff guidelines of March 2005 enables this Authority to recognize the interim rate adopted in an ad hoc manner retrospectively. The measure of JNPT to implement the rate of Rs.500 on ad hoc basis is, therefore, approved keeping in view the unanimous endorsement of the proposed rate by the user organizations.
- (vii). The other two private container terminal operators, namely the NSICT and GTIPL at the JNPT have reported that they also levy the charges on case to case basis. However, this Authority has not given any authorization to any of the operators including JNPT to levy any charge for rendering this service. The JNPT has not pointedly commented on our advice to enquire into the matter in its capacity as the licensor and in discharge of its responsibility under the provisions of MPT Act, 1963 as to how the NSICT and GTIPL came to levy the said charges without approval from this Authority. As it is seen from the response of the NSICT and GTIPL, they are

generally agreeable for incorporation of a suitable provision in their respective Scale of Rates.

- (viii). It emerges in this proceedings that all the three operators at the JNPT render the service in one form or the other. That being so, it is appropriate to prescribe a ceiling rate for this service to be applied commonly at the JNPT without reference to individual service provider.

Clause 7.2. of the tariff guidelines of March 2005 enables this Authority to prescribe ceiling rates to be applied commonly at the concerned ports without reference to individual service provider. For this purpose, proposals for regulating these charges should be initiated by the concerned major port trust after identifying such authorized services coming under the ambit of tariff regulation. Treating the proposal dated 3 February 2009 filed by JNPT as the proposal from the port for the purpose of Clause 7.2. of the tariff guidelines of March 2005, this Authority, for the reasons stated above, is inclined to approve the proposed rate of Rs.500 per visit of the garbage collector to ship / hired port craft at the JNPT as a ceiling rate to be applied commonly at the JNPT as a whole without reference to individual service provider.

- 9.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves to insert the following provision after the existing Section 2.4 – Schedule of Fresh water charges in Chapter – II (Vessel Related Charges) in the Scale of Rates of JNPT:

“2.5. Schedule of garbage collection charges:

Sl. No.	Description	Unit	Rate per ship / hired port craft per visit of the garbage collector to the ship / hired port craft
1.	Charges for collection of garbage from ships and hired port crafts.	Rs.	500-00

- 9.2. The JNPT is directed to amend its Scale of Rates suitably. The amendments to the Scale of Rates shall come into effect immediately on notification this Order in the Gazette of India as the ad-hoc rate is already in operation.

- 9.3. The JNPT, as land lord port, shall ensure that the above ceiling rate is enforced in the entire port.

(Rani Jadhav)
Chairperson

SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS / DIFFERENT USER ORGANISATIONS BEFORE THE AUTHORITY.

No.TAMP/7/2009-JNPT

- Proposal from the Jawaharlal Nehru Port Trust (JNPT) for fixation of charges for collection of Garbage from ships calling at the JNPT container terminal and shallow water berths.

A Summary of the comments received from the users / user organizations are summarised below:

Indian Merchant's Chamber (IMC)

As the charges proposed to be recovered by the port authorities are from the Shipping Lines towards collection of garbage from the ship calling at J.N. Port, the same does not form the part of the on-board Terminal Handling Cost. IMC has no objection, except to request the TAMP to ensure that the said cost does not get transferred to the Industry under THC.

Office of the Commissioner of Customs (Exports)

The Export Commissionerate of Jawaharlal Nehru Custom House has no comments to offer since the issue relating to fixation of tariff does not relate to Customs. However it may be pointed out that the clearance of imported goods is permitted only after completion of Customs formalities.

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