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TARIFF AUTHORITY FOR MAJOR PORTS

GNo.189

New Delhi,

12 November 2008

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 reference from the Mumbai & Nhava Sheva Ship-Agents Association seeking clarification on the levy of shifting charges and port dues at JNPT as in the Order appended hereto.

(Brahm Dutt)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/35/2007 – JNPT

The Mumbai and Nhava-Sheva Ship Agents' Association - - -

Applicant

ORDER

(Passed on this 30th day of September 2008)

The Mumbai and Nhava-Sheva Ship-agents Association (MANSA) vide its letter dated 25 June 2007 made a reference seeking clarification on certain conditionality governing levy of the Vessel related charges at Jawaharlal Nehru Port Trust (JNPT). A copy of the reference of MANSA was forwarded to JNPT for its comments vide our letter dated 5 July 2007. In response, JNPT vide its letter dated 20 July 2007 has furnished its comments. The submissions of MANSA and the comments of JNPT thereon are summarised and tabulated below:

Sr. No.	Submissions of MANSA	Comments of JNPT
(i).	<u>Shifting Charges:</u> In the revised Scale of Rates of JNPT, notes 4 (i) (a) to (e) under Section 2.2.C list down the various types of shifting of a vessel, which would be considered as shifting for port convenience. JNPT has interpreted this provision in such a way that the definition of port convenience is made applicable to the JNPT Container Terminal only. Overlooking the definitions of Port convenience, JNPT insists the users to pay shifting charges for the vessels to be shifted at BPCL liquid jetty/ NSICT/ GTIPL and even at JNPT's shallow water berth. Vessels are required to be shifted at BPCL jetty from LB02 to LB01 and vice versa to accommodate vessels of suitable length. Vessels are required to be shifted at NSICT and GTIPL to accommodate other vessels which otherwise would have to wait and waste available resources.	The port is correctly levying the vessel shifting charges as per the TAMP approved tariff and conditions. As the decision to shift at BOT terminals is not taken by JNPT authorities, the vessels shifted at NSICT, GTIPL & BPCL cannot be treated as shifted for Port (JNPT) convenience. The port uses scarce resources (Pilots, tugs etc.) for carrying out the shiftings. Because of this, one free shifting (within the same Terminal) was removed from the earlier pilotage tariff, as this was being misused by Terminals / vessels Agents, and most of the shiftings were done due to bad planning, without giving a thought to additional work, which the port was made to do free. MANSA is trying to create an impression that in the earlier tariff, the shifting were being done at the Terminals for port convenience, which is not correct. Shiftings were not being charged, as long as they were within the same Terminal, due to one free shifting allowed in the previous tariff. But inter Terminal shiftings have always been charged in the earlier tariff too. The definition of Port Convenience cannot be made applicable for terminals, and it never was. The port provides the pilotage service. Hence, if it is to the convenience of port owned terminal, the port is bound to respect the definition of "Port Convenience".
(ii).	<u>Port Dues:</u> (a). As per Section 2.1 of the Scale of Rates of JNPT, port dues are payable for each entry of a vessel in the port. (b). Additional port dues are being levied on vessels shifting to outer roads without completion of cargo operation and re-berthed with the same Vessel Identification Advice (VIA) and Custom Entry as no port clearance has been	Since all the activities are performed for bringing the vessel except issue of VIA numbers, the levy of charges are justified. The tariff clearly indicates Port dues on each entry, and if the vessel leaves the port and returns, even under the same VIA, the vessel has used the channel, harbour, buoys, lights (for which Port Dues are charged), even on subsequent entries to the Port. Hence Port Dues

sought and obtained by the vessel. JNPT has no inner anchorage for re-berthing and the option is only to shift to the outer roads. In such cases, it should be treated as part of a vessel call rather than a separate entry to levy additional port dues. (c). The MBPT has its own anchorage and shifting to anchorage and on re-berthing, the vessels are not required to pay separate port dues again.	has to be charged on every entry as provided for in the tariff.
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2. In terms of clause 3.1.5 of the revised tariff guidelines, this Authority entertains representations filed by individual users if it involves fixation of tariff/ Scale of Rates. Since MANSA has represented on the tariff related issues, it was decided that the representation of MANSA be considered as a separate "tariff case" for the limited purpose of issue of clarification.

3.1. In accordance with the consultative procedure prescribed, a copy of the reference of MANSA alongwith the comments of JNPT was forwarded to the concerned user organisations and also to the three private terminals operating at JNPT viz. Nhava Sheva International Container Terminal Limited (NSICT), Bharat Petroleum Corporation Limited (BPCL) and Gateway Terminals India Private Limited (GTIPL) for their comments.

3.2. The comments received from the private terminals and some of the user organisations were forwarded to JNPT as feed back information. The JNPT has responded to the comments of user organizations. The JNPT has not responded to the comments of BPCL and GTIPL.

4. A joint hearing on the case in reference was held on 30 June 2008 at the Office of this Authority. At the joint hearing, the MANSA, JNPT, NSICT and BPCL have made their submissions.

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

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

- (i). The License Agreements entered by the JNPT with the licensed terminal operator provide, inter alia, for levy of Port Dues and Pilotage Fee by the JNPT for the vessels which call on the terminals operated by the NSICT, BPCL and GTIPL.
- (ii). The Scale of Rates of JNPT, which includes Port Dues and Pilotage Fee, was last revised by this Authority in September 2006 vide Order dated 28 September 2006. Prior to September 2006, Pilotage Fee was leviable as per the arrangement and rates prescribed in the Scale of Rates vide Order dated 27 August 2002.
- (iii). In terms of the provisions contained in the pre-revised Scale of Rates of JNPT, approved in August 2002, the pilotage fee was a composite charge which included one act of shifting of the vessel at the request of the users within the same terminal. This position was rationalized in line with Clause 6.4 of the March 2005 Guidelines. One of the components of the composite tariff item of 'pilotage fee' namely shifting of the vessel at the request of the users, was segregated adjusting the unit rate of the then existing composite tariff during the review of the Scale of Rates of JNPT undertaken in September 2006. Consequently, shifting of the vessel at the request of the users attracts separate shifting charges in the tariff arrangement approved in September 2006.

- (iv). In the pre-revised Scale of Rates approved in August 2002, no charges were leviable for shifting of a vessel for port convenience. The relevant provision in the pre-revised arrangement, listed therein, contained various types of shifting of a vessel which should be considered as shifting for "port convenience". This position is retained without any change in the revised arrangement approved in September 2006 as per port's proposal. The MANSA has sought to argue that the definition of port convenience contained in the Scale of Rates of JNPT should be made applicable for the terminals operated by the licensees at JNPT. But it is the contention of the licensor that the definition of "port convenience" was never made applicable for the terminals operated by the licensees. It is noteworthy to mention here that this issue was not agitated by the users during the proceedings which culminated into passing of tariff Order of September 2006. It has to be recognized that this proceeding is limited to offering clarification on the existing Scale of Rates of JNPT and not for amending it.
- (v). As rightly pointed out by the JNPT, shifting of a vessel consumes resources; and, therefore, every shifting involves expenditure. When the JNPT shifts a vessel for its convenience at the terminal operated by it, the expenditure involved in shifting of a vessel is absorbed by the port. As mentioned in the preceding paragraph, the term "port convenience" was so far not applied to refer to convenience of the terminals operated by the licensees. That being so, application of the definitions of "port convenience" defined in the existing Scale of Rates of JNPT to the terminals operated by the licensees at this juncture may lead to additional financial burden to the JNPT. In order to off set such liability, other tariff items need to be adjusted which warrants a comprehensive review of the Scale of Rates of JNPT. The issue can be conveniently analyzed at the time of the next revision of the Scale of Rates. Till such a review, the arrangement in vogue may continue.
- (vi). The proceedings in the case has brought out a case for prescription of conditionalities to govern the levy of shifting charges when the JNPT shifts the vessels at the terminals operated by the licensees. The existing Scale of Rates of the Licensees at the JNPT also does not contain conditionalities in this regard. This Authority, therefore, advises the JNPT to finalize suitable provisions in consultation with NSICT / GTIPL / BPCL in this regard. Such provisions should list out in detail the various movements of vessels constituting 'terminal convenience' and 'JNPT convenience'. The JNPT is advised to incorporate the suitable provisions in the general revision proposal for revision of its Scale of Rates to be filed by the port.
- (vii). Another issue raised by the users is levy of additional Port Dues on re-entry of the vessel into JNPT. Port Dues is a fee for entry of the vessel into the port. The fee is payable by the vessel on each entry into the port, as prescribed in the Scale of Rates of JNPT.
- (ix).
 - (a). It is the argument of the users that the JNPT levies additional port dues on vessels shifted to outer roads without completion of cargo operations. Where as the JNPT has sought to justify levy of Port Dues on re-entry of vessel on cost grounds and on the ground that outer roads do not fall within the port limits.
 - (b). Port dues being a charge prescribed for each entry of a vessel into the port limit, this Authority does not find any reason to reject the contention of JNPT.

7. In the result and for the reasons given above, and based on a collective application of mind, the JNPT is directed to include suitable provisions in its General Revision proposal to be filed by the port, in consultation with NSICT / GTIPL / BPCL as far as this tariff item is concerned, listing out in detail the various movements of vessels constituting "terminal convenience" and "JNPT convenience".

(Brahm Dutt)
Chairman

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

F. No.TAMP/35/2007-JNPT - Reference from the Mumbai & Nhava Sheva Ship-Agents Association seeking clarification on the levy of shifting charges and port dues at JNPT as per revised Scale of Rates.

1. A Summary of the comments received from the private terminals and some of the user organisations were forwarded to JNPT as feed back information. The comments of users and the response of JNPT are tabulated below:

Sr. No.	Comments from users	Comments of the JNPT on the comments of users
1.	Mumbai and Nhava Sheva Ship Agents Association (MANSA)	
(i).	<u>Shifting Charges:</u> (a). JNPT charges shifting for all terminals other than JNPT Container Terminal (JNPT CT) because "Convenience for Port" is read as to be applicable for JNPT CT convenience only. JNPT charges shifting even when the vessels are shifted from JNPT CT to JNPT Shallow berth.	JNPT is carrying out many shiftings for port convenience. Shifting at the private terminals have to be charged, either to the terminal, if it is their convenience, or to the vessel. Even when the shifting is done at JNPT CT or shallow water berth, it is charged if it does not fall under the category of port convenience.
	(b). Shifting is done not due to bad planning but due to exigency of situation. JNPT does the planning for the shallow berth and BPCL berths. Vessels, which can be berthed only at certain berths having draft or LOA restrictions, can be berthed at that berth, only when another vessel occupying the berth is shifted to other berth.	Shifting of vessels in the port cannot be avoided if parameters like window vessels, LOA, drafts, tidal timings are taken into account. Vessels availing partial berthing know very well about the conditions attached to their out of turn berthing. These vessels are required to be shifted either within the port limits or at outer roads as JNPT does not have adequate anchorage. The expenditure involved in shifting is borne by JNPT itself. The only solution is to avoid pre-berthing completely and if the agents require it urgently, then an undertaking to bear all costs incurred by port needs to be taken by the port from the agents. The definition in the Scale of Rates need not be changed.
	(c). No Vessel Agents/ terminal misuse any provision and shifting is requested only when there is an infrastructure limitation/ failure at berths or due to LOA or draft restrictions.	JNPT has not commented.
(ii).	<u>Port Dues:</u> (a). Vessels go to Outer anchorage after having called at JNPT not on its own accord but due to circumstances beyond their control. JNPT does not have any inner anchorage unlike Mumbai Port Trust (MBPT), which gives subsidy to the additional call within the month by charging only 25% for the subsequent calls within a period of 30 days.	The SOR clearly states that the Port dues are chargeable on every entry of the vessel into the port. A vessel agent accepts the berth on the first call with a clear understanding that the operations may not be complete in the first call.
	(b). For every shifting, the vessel pays full pilotage which should be the compensation for using the channels, harbour, buoys, lights etc., of the common channel.	
	(c). A vessel is considered to have arrived by JNPT and MBPT when it arrives at the Outer anchorage and hence shifting to outer anchorage is to be considered as within the port area in the same call.	JNPT has not commented.

2.	The shipping Corporation of India Limited (SCI)	
(i).	<u>Shifting Charges:</u> (a). No shifting charges should be payable, if the vessels are shifted for port's convenience between the terminals including the liquid terminal and shallow water berth.	JNPT has not commented.
	(b). By carrying inter-terminal shifting, the port will be able to maximize its available resources and earn additional revenue. The Ship owners should not be charged for the additional shifting carried out for port convenience.	
(ii).	<u>Port Dues:</u> (a). There are many instances where a vessel without completing her cargo operations in the port is asked to vacate the berth and wait at outer anchorage for reberthing.	The SOR clearly states that the Port dues are chargeable on every entry of the vessel into the port. A vessel agent accepts the berth on the first call with a clear understanding that the operations may not be complete in the first call.
	(b). JNPT does not have its own anchorage and the vessels have to move to outer anchorage, which is outside the port limits.	
	(c). When a vessel has not completed its cargo operations, the ship owners should not be asked to pay port dues and other marine charges for the second entry. In the above circumstances, the dues once paid should remain valid till for atleast a fortnight or till the vessel is re-berthed whichever is earlier.	The term 'Port Dues' is well defined by TAMP. The payment of the charges has to be made by the agents as per the SOR. The outer roads cannot be considered as area within the port limits of JNPT. Thus every vessel entering the port has to pay the charges.
3.	Bombay Chamber of Commerce and Industry (BCCI)	
(i).	There is a clear lack of capacity at the container terminals at JNPT, at present, leading to delays to the ships, at times. Whenever a vessel is berthed at one of the terminals for the operation, the vessel agents will not be seeking any shifting as it hampers the operation and delays the sailing of the vessel. Thus, the question of agents requesting for shifting except for some exceptional cases like ship repairs does not arise. Any shifting other than exceptional cases is only to suit the port's convenience of accommodating another vessel. Obviously for such shiftings, the vessel agent cannot be punished.	JNPT has not commented.
(ii).	Whenever a shifting is imperative for port's convenience, the JNPT will ask the vessel agent to submit an application for shifting and then term the shifting 'as per vessel's request'. If this is happening, TAMP should interfere and prevent the same.	
		Shifting of vessels in the port cannot be avoided if parameters like window vessels, LOA, drafts, tidal timings are taken into account. Vessels availing partial berthing know very well about the conditions attached to their out of turn berthing. These vessels are required to be shifted either within the port limits or at outer roads as JNPT does not have adequate anchorage. The expenditure involved in shifting is borne by JNPT itself. The only solution is to avoid pre-berthing completely and if the agents require it urgently, then an undertaking to bear all costs incurred by port needs to be taken by the port from the agents. The definition in the Scale of Rates need not be changed.

(iii).	Vessel cannot be subjected to more than one port dues.	The SOR clearly states that the Port dues are chargeable on every entry of the vessel into the port. A vessel agent accepts the berth on the first call with a clear understanding that the operations may not be complete in the first call.
(iv).	The shifting charges should be done away with, as by paying shifting charges, the vessel agents tend to over occupy the berth and avoid shifting and shifting for port convenience cannot be charged.	JNPT has not commented.

2. The comments furnished by the terminal operators at JNPT are summarized below:

Bharat Petroleum Corporation Limited (BPCL)

- (i). As per the provisions of the Licence Agreement (LA), JNPT is providing services for berthing/ unberthing of the vessels at the jetty by levying suitable charges under various heads. BPCL do not play any role and hence do not charge or have any revenue sharing arrangement with JNPT.
- (ii). The definition of the Port and its purview should not be restricted to only JNPT CT. JNPT is responsible on behalf of BPCL for all the vessel related services. If the JNPT has decided to not provide free services for shifting of the vessels then such shifting charges have to be borne by the respective jetty user who has approached the port for shifting the vessel.

Gateway Terminals India Private Limited (GTIPL)

- (i). Shifting charges should apply to all terminals operating at JNPT in a similar manner.
- (ii). The vessels have to leave the port limits because of the restrictions at JNPT anchorage to accommodate the vessels. As a matter of protocol, terminals will have to give preference to the window vessel, which means that the unscheduled vessel has to be at the outer anchorage till the time the operations for the window vessel is complete. Since GTIPL does not have the facility, the vessels have to suffer delays and extra cost.

3. A joint hearing on the case in reference was held on 30 June 2008 at the Office of the Authority. At the joint hearing, the following submissions were made:

Mumbai And Nhava-Sheva Ship-agents' Association

- (i). JNPT's interpretation of 'shifting' is narrow. It should cover all the terminals in the port.
- (ii). Port dues should not be levied for the second time when vessels which are shifted to outer anchorage re-enters to complete the operation.

Jawaharlal Nehru Port Trust

- (iii). We can't forego revenue if shifting is resorted because of the reasons attributable to private terminals.
- (iv). We were not charging earlier, because the tariff included one free shifting. Now it is not so. The pilotage fee and shifting fees are segregated. We do not charge if the shifting is for port's convenience.
- (v). We have correctly applied the Scale of Rates notified by TAMP which prescribes levy of Port Dues per entry.

Nhava Sheva International Container Terminal

- (vi). JNPT can't discriminate between its terminal & other terminals.

Bharat Petroleum Corporation Limited

- (vii). JNPT provides vessel related services to all terminals. Therefore, the definition of port must cover all terminals.

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