

(Published in Part - III Section 4 of the Gazette of India, Extraordinary)
Tariff Authority for Major Ports

GNo.190

New Delhi,

12 November 2008

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes the proposal received from the Mormugao Port Trust (MOPT) for review of efficiency linked tariff scheme (ELTS) as in the Order appended hereto.

(Brahm Dutt)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/8/2008 - MOPT

Mormugao Port Trust

- - -

Applicant

O R D E R

(Passed on this 30th day of September 2008)

This case relates to a proposal received from the Mormugao Port Trust (MOPT) for review of Efficiency Linked Tariff Scheme (ELTS).

2.1. The Efficiency Linked Tariff Scheme in vessel related charges at MOPT was first introduced vide Order dated 24 November 1998. Subsequently, the Efficiency Linked Tariff (ELT) Scheme was revised vide Order dated 31 August 2000.

2.2. The representation filed by the port in the year 2000 for review of the ELT scheme on the grounds that port loses incentive due to shortage of cargo at the stackyard was rejected by this Authority vide Order dated 20 September 2001. It was observed that the financial loss of incentive reported by the MOPT was notional. The delay in aggregating cargo by shippers could be tackled by the port operationally by admitting only such vessels to enter the port that have adequate cargo for loading at the stackyard. Accordingly, the port issued a circular on 24 December 2002 notifying the trade that the turnaround time for the purpose of the ELT Scheme would be reckoned from the time of availability of adequate cargo i.e. 90% of the parcel size in the stackyard. The users objected to the introduction of the clause.

2.3. At the joint hearing held in this case, the port agreed to maintain status quo. This Authority, therefore, vide Order dated 22 June 2004 directed the port that the scheme as prescribed in its Scale of Rates of 2002 would continue to be in operation. In the said order, this Authority held that the port may admit only such vessels which have 90% of parcel size at the stack yard, however, while introducing such a condition affecting the actual performance, a corresponding change should also be made in computing the benchmark level.

2.4. Subsequently, the port filed a consensus proposal for revision of ELT scheme in October 2004 for stipulating a condition about 90% cargo accumulation for computing the turnaround time of the vessel. Since the proposal was based on consensus from the concerned users, this Authority granted adhoc approval for introduction of the proposed condition from 1 October 2004 for the operational year 2004-05 provided that the same yard stick is applied for determining the cut-off norm with reference to the past actuals.

The adhoc approval granted for the operational year 2004-05 was extended for subsequent two years 2005-06 and 2006-07 at the request of the port and consensus of all the users.

2.5. The adhoc approval granted earlier was regularised by Order dated 29 December 2006 and the provision about computation of turnaround time was substituted by the following:

"The turnaround time for the purpose of ELT scheme will be reckoned from the time of availability of adequate cargo i.e. 90% of the parcel size in the stack yard and ready for shipment on the basis of stock declared by the concerned exporter and close at the time of departure from berth on completion of cargo operation"

The port was advised to refund the excess billing made by applying the condition of accumulation of adequate cargo for the period from introduction of the condition till the effective date of implementation of adhoc approval granted to the scheme from the year 2004-05.

3.1. The Mormugao Port Trust in the instant proposal dated 6 February 2008 has requested this Authority to revise the existing parameters prescribed for computation of cut off limit of ELT on the following main grounds:

- (i). There are two ship loaders at MOHP to facilitate loading of vessels which have completed 28 years. Unfortunately Shiploader-II collapsed on 1 July 2007 due to

which half of the handling capacity of MOHP has been affected. This has resulted in decrease in the daily loading rate of cargo at MOHP from October 2007 onwards consequently leading to increase in detention time of vessels. As a result, the berth hire charges are levied at 60% of the normal berth hire charges on vessels loaded at MOHP as per the existing ELT Scheme. Further, due to appreciation of the rupee against the US dollar, there is substantial reduction in the vessel related charges. It is, therefore, felt necessary to review the parameters of cut off limit prescribed in the ELT Scheme.

- (ii). The Design Engineer M/s Sandvik India Pvt. Limited has recommended to operate the plant on de-rated capacity of 70% till the replacement of entire shipping equipment. Even after commissioning of Shiploader-II from 11 January 2008, the projected average loading at MOHP would be 70% of the installed capacity and in view of that the parameters based on five years average need to be revised.
- (iii). In this regard, a meeting was convened by the port with Goa Mineral Ore Exporters Association, Mormugao Ship Agents Association (MSAA) and Indian National Shipowners Association on 24 January 2008 to discuss and review the existing ELT Scheme considering the reduction in handling capacity of MOHP. It has furnished a copy of the minutes of the said meeting held on 24 January 2008.
- (iv). At the said meeting, the details of downtime on ship's accounts handled at MOHP was brought to the notice of the users. It was suggested either to do away with the present scheme or to revise the parameters of cut off limit of ELT Scheme at de-rated capacity of 70% of MOHP.
- (v). During the meeting, the Goa Mineral Ore Exporters Association (GMOEA) maintained that the scheme is fair to the users as well MOPT as this acts as a safeguard on the standards of performance for users under a cost plus tariff model. The GMOEA did not agree with the port's proposal to withdraw the ELT scheme.

MSAA agreed to revise the parameters of ELT Scheme under the present situation since the plant has to be operated at reduced handling capacity as advised by the expert.

- (vi). When the scheme was introduced, the equipment deployed at MOHP were almost on the verge of completion of its life. There was also no discussion on replacement of the MOHP plant when the TAMP approved the scheme. An ageing plant with limitations cannot be expected to perform at its peak at all times. Therefore, contention of GMOEA that there cannot be review of scheme defies the logic.

3.2. In view of the above, the MOPT has proposed the following:

- (i). To revise the parameters of cut off limits of ELT Scheme considering 70% handling capacity of MOHP, and apply the proposed modification with effect from 11 January 2008.
- (ii). During the period from 1 October 2007 to 10 January 2008, only one ship loader was working at MOHP. Hence the ELT Scheme must not be applied during the said period.
- (iii). The average pre-berthing detention time for operation of ELT Scheme was computed considering waiting time on port's account and also other than port's accounts based on TAMP's Order No. TAMP/37/2002/MOPT dated 27 August 2002. This was made applicable upto operational year 2003-04. After introduction of the condition about 90% accumulation of adequate cargo, the average pre-berthing detention time was calculated considering the detention time on port's

accounts only and accordingly ELT Scheme was implemented for the subsequent operational years.

The MOPT has submitted that since TAMP has not sanctioned introduction of condition of 90% adequate cargo accumulation and advised the port to refund the excess billing for the period prior to operational year 2004-05, it is required to revise the average pre-berthing detention time considering detention time other than port's account for the operational years 2002-03 and 2003-04 as ELT Scheme for these years was operated excluding the time other than port's account.

In view of the above position, the MOPT has proposed to revise the average pre-berthing detention time for the operational years 2004-05 to 2007-08 considering the pre-berthing detention time of other than port's account for the operational years 2002-03 and 2003-04. This works out to 4.14 days, 2.91 days, 2.31 days and 2.03 days for the operational years 2004-07 to 2007-08 respectively.

4. In accordance with the consultative procedure prescribed, the MOPT proposal was forwarded to the concerned users / user organisations seeking their comments. The comments received from users / user organisations were forwarded to MOPT as feedback information. The MOPT has furnished its comments on the comments of users/user organisations.

5.1. A joint hearing in this case was held on 14 July 2008 at the MOPT premises. At the joint hearing, the MOPT and the concerned users / user associations have made their submissions.

5.2. At the joint hearing, the MOPT made a power point presentation of its proposal. The MOPT apart from reiterating its earlier submissions has stated that it will never be able to achieve the cut-off time fixed on the past five years data and in all cases it will have to grant sizeable amount as rebate. Since it is required to operate at the de-rated capacity, continuing with the ELT Scheme will be one-sided and lead to revenue loss to the port. It has, therefore, reiterated its request to approve revision of cut-off limits considering 70% of the handling capacity of MOHP w.e.f. 11 January 2008.

5.3. The GMOEA also made a powerpoint presentation explaining its arguments on the port proposal. The points highlighted by the GMOEA are given below:

- (i). It has no objection for revision of the average pre-berthing detention time for the operational years 2004-05 to 2006-07 provided the pre-berthing detention time on account of shippers is not included.
- (ii). Revision of the cut off limit is unfair for following reasons:
 - (a). The plant has not been maintained properly in spite of huge expenditure incurred and borne by the users as observed in the report of Sandvik Asia. Infact Sandvik Asia has termed the degradation as "man-made".
 - (b). The actual performance of the plant during last quarter of 2007-08 has been more or less at same levels of 2006-07. The performance is improving as could be seen from the figures of April.

		Figures in lakhs
Months	2006-07	2007-08
January	11.42 *	11.24
February	12.97	12.61 @
March	15.06	15.45
	39.45	39.30
April	13.17	13.72
*: Corrected to 21 days operation of one ship loader		
@: Corrected to 29 days of working ignoring strike period of 3 days		

Since the performance of ship loaders has not come down, there is no justification to accept MOPTs' proposal to revise the ELT scheme.

- (c). Increased efficiency over the years should have resulted in higher efficiency based earnings to MOPT. Conversely, users should not be asked to bear the consequences of MOPT's failures.
- (iii). The request for suspension of the ELT scheme from 1 October 2007 to 10 January 2008 is acceptable.

6.1. At the joint hearing, the GMOEA submitted that the port has not effected the refunds as ordered by TAMP vide its Order of December 2006. The port clarified that the refunds are being processed and will be paid within a month. The port was directed to refund the excess billings made earlier as per the Order of 2006 within 30 days and send a compliance report.

6.2. As directed at the joint hearing, the MOPT has furnished a compliance report of refund of excess billing remitted by the port to the users.

7. The MOPT has furnished clarifications with reference to the points made by the GMOEA in its presentation which is summarised hereunder:

- (i). The GMOEA has stated that the actual performance of the plant during the last quarter of 2007-08 has been more or less at same levels as that of 2006-07. The observation made by GMOEA, as far as the performance of MOHP during the period referred is true.

It has to be appreciated that the cut-off limit under the ELT scheme is worked out based on the berth day rate for each vessel and not on the total performance in a month. A better berth day rate can be achieved with higher loading rate on net working.

- (ii). (a). A table showing the effect of operating the plant at a de-rated capacity of 70% has been furnished by comparing the loading rates achieved in both the years.

Month	Year	Qty. Loaded (in tones)	Net Working time	Loading Rate (Tonnes Per Hour)
January (from 12 th)	2008	900795	425 hrs 15 min	2118
	2007	1074065	389 hrs 15 min	2759
February	2008	1143173	563 hrs 15 min	2029
	2007	1296998	530 hrs 10 min	2446
March	2008	1544791	739 hrs 15 min	2089
	2007	1506042	624 hrs 40 min	2411
April	2008	1372112	649 hrs 40 min	2112
	2007	1317073	519 hrs 20 min	2536
May	2008	1382732	689 hrs 30 min	2005
	2007	1555723	632 hrs 30 min	2460

- (b). From the table, it can be observed that the performance in the months of February, March and April 2008 is more or less at same levels as that of previous year. This could be achieved by over stretching the equipment utilization, at times even sacrificing the preventive maintenance schedules to cover the throughput loss during the months of October 2007, November 2007, December 2007 and till 11 January 2008.
- (iii). In view of the facts mentioned above, the request for 70% reduction in berth day rate as well as upward revision for pre-berthing detention is reasonable.

- (iv). Regarding GMOEA's observations on Sandvik Asia's report that degradation of equipment is due improper maintenance, it is clarified that the remarks of the GMOEA/Sandvik have to be viewed considering the age of the plant. If proper maintenance was not carried out, it would not be possible to operate a plant of this nature for a prolonged period of 29 years, compared to the normal, useful economic life of 15 to 20 years.
- (v). As regards replacement of equipment, it has reiterated its earlier submissions and stated that Order has already been placed for 3 nos. of stackers with higher capacity and these equipment are scheduled to be installed during shutdown in 2009 and 2010. 2 nos. of reclaimers and 2 nos. of shiploaders could not be replaced since the tenders had to be closed on as many as three occasions. Action for replacement has been initiated once again.

8. 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>.

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

- (i). The Efficiency Linked Tariff Scheme revised by this Authority in August 2000 prescribes the conditions governing the scheme. The ELT scheme is operational at the port of Mormugao only during the fair season of the year i.e. 1 October to 31 May.
- (ii). The instant proposal of the MOPT to review the existing ELT Scheme emerges on account of breakdown of one of the ship loader deployed in the Mechanised Ore Handling Plant (MOHP). The proposal of the MOPT are as follows:
 - (a). To suspend the ELT scheme for the period 1 October 2007 to 10 January 2008 when one of the ship loader in the MOHP was not in operation.
 - (b). Revise the parameters prescribed for cut off limits of the ELT scheme by de-rating the handling capacity of the MOHP to 70% w.e.f. 11 January 2008.
 - (c). The condition about accumulation of adequate cargo was approved by this Authority from 1 October 2004 whereas the port had based on its Circular issued in December 2002 considered this factor for arriving the cut off norm for the years 2002-03 and 2003-04. In view of this position, the average pre-berthing detention time for the operational years 2002-03 and 2003-04 needs to be revised. Consequently, the pre-berthing detention time for the operational years 2004-05 to 2008-09 which considers the preceding five years data also needs to be revised.
- (iii). With reference to (ii). (a). above:

The MOPT has reported that out of the two ship loaders deployed at the Mechanised Ore Handling Plant, one of the ship loader collapsed on 1 July 2007. This ship loader was repaired and made functional from 11 January 2008. As a result, the Mechanised Ore Handling Plant was operated at half of handling capacity for the period from 1 October 2007 to 10 January 2008. Since the mechanised operating system could not be operated with the full fleet of equipment, it has requested that the ELT scheme should not be made applicable for the said period. Most of the users / user associations including Goa Mineral Ore Exporter's Association have agreed to this part of proposal. The proposal of the port to suspend the implementation of the ELT scheme for the period 1 October 2007 to 10 January 2008 is, therefore, accepted.

(iv). With reference to (ii). (b). above:

- (a). The Ship loader – II was reportedly recommissioned from 11 January 2008 after major repair works by the port.

According to the port, it has been advised to operate the MOHP at de-rated capacity of 70% till the replacement of entire fleet of equipment in order to avoid major breakdown to the machinery / equipment in future. The port is of the view that it would not be in a position to achieve the efficiency below the cut off limit arrived based on the past five years data. As a result, under the existing ELT scheme, rebate is to be granted in the berth hire to the vessels loaded at the MOHP. Consequently, 60% of the berth hire is to be collected from such vessels.

It has to be recognised that when the productivity of shore based installations is affected, the duration of stay of the vessel at the berth increases. Hence even if the unit rate of berth hire may be lower due to the rebate allowed as per the existing ELT scheme, the total berth hire in absolute terms is payable for a longer duration of stay of the vessel at the berth.

The performance of MOHP for the period February 2008 to April 2008 reported by the MOPT as recorded in paragraph 7 (ii) is found to be lower than the corresponding period. However, the net working time which reflects the stay of vessels at berth is more than the previous year.

- (b). Another reason explained by the MOPT for revision in the ELT scheme is reduction in the income from vessel related charges due to appreciation of rupee against the dollar terms. Appreciation of rupee against the dollar terms is not the relevant factor for revision of the ELT scheme.
- (c). The Goa Mineral Ore Association (GMOEA) has argued that the collapse of ship loader is not a sudden development but an indication of inadequate maintenance by the port and improper policies of port on replacement of capital assets.

The port has pointed out that some of the components of the MOHP like the barge un-loaders have been replaced in a phased manner and stackers with higher capacity are likely to be replaced by 2010. The delay in replacement of ship loaders and reclaimers is attributed to tender related issues due to non-acceptance of the terms and conditions by the bidders.

The breakdown of the ship loader and the need for de-rating capacity of MOHP to 70% has been attributed to the ageing of the plant. At no point of time in the past when the ELT was introduced or revised or on the occasion of tariff revisions in the year 2006 and even earlier did the port bring out the position about equipment in the MOHP nearing its useful life.

The efficiency expected from a port includes not only the performance of a particular facility but also the managerial efficiency in planning and maintaining the facilities and timely replacement thereof. It is more than a year since the major break down of ship loader- II. The replacement of the equipment has, however, not been finalised even though the MOPT itself has admitted about the end of useful life of the concerned plant. It is not clear why the users should bear the consequences of delays in replacement of equipment at appropriate time by the port.

- (d). Further, the basis of arriving at the de-rated capacity of 70% is not substantiated by the port with any calculation. The port has merely referred to a separate communication of the Design Engineer in this regard which does not form part of its initial report.
- (e). It has to be noted that the basic berth hire of MOPT is based on the anticipated revenue (without ELT income) and, therefore, the cost analysis considers certain GRT hours of revenue. If the ELT scheme is to be revised by de-rating the capacity as proposed by the MOPT, then the income from the berth hire considered in the financial model while revising Scale of Rates will have to be reviewed and revised based on the reduced productivity level and consequently increased stay of vessel at the berth and, therefore, higher revenue. The port has, however, not suggested this adjustment which has to necessarily follow if efficiency parameters are reset.
- (f). In view of the position explained above, this Authority is not inclined to reset the efficiency parameters of the ELT scheme.
- (v). With reference to (ii). (c). above:
 - (a). The average pre-berthing detention time for operation of ELT Scheme was reportedly computed considering waiting time of vessel on port's account and other than port's accounts prior to introduction of the condition of accumulation of adequate cargo.
 - (b). Subsequently, the port in order to tackle the operational problem of delay in accumulation of cargo by shippers had introduced a condition about accumulation of 90% of cargo based on a circular issued by the port to the trade in December 2002. While doing so, the average pre-berthing detention time was reportedly calculated considering the detention time on port's accounts only.

In this context it may be clarified that the point made by the MOPT that this Authority did not approve the condition of accumulation of adequate cargo from December 2002 is not the correct interpretation of our Orders. This Authority had in fact in its Order of 20 September 2001 allowed the port to tackle the operational issue of delay in accumulation of cargo by shippers.

But it was understood that the port while affecting the condition from December 2002 about accumulation of 90% of cargo on the actual performance, had not made corresponding adjustments in the computation of benchmark level. In view of the objection from users on introduction of the said condition and also at the request of the MOPT, this Authority had vide Order No.TAMP/63/2003-MOPT dated 22 June 2004 required status quo to be maintained and directed the port to continue to apply the conditions of the ELT scheme as prescribed in its Scale of Rates approved in August 2002.

Subsequently, this Authority in its Order of 29 December 2006 Order has approved the condition of accumulation of adequate cargo i.e. 90% from the operational year 1 October 2004.

- (c). Thus it is clear that the condition about 90% cargo accumulation was not applicable for the period prior to 1 October 2004. Whereas the Port had reckoned this factor in the computation of pre-berthing detention time based on the circular issued to the trade in December 2002. It has reportedly excluded the time other than the port's account in computation of pre-berthing detention time for the years 2002-03 and 2003-04.

Hence for the period prior to October 2004 i.e. from December 2002 till 1 October 2004, the port has requested to revise the computation of pre-berthing detention. Consequently, the average pre-berthing detention time for the operational years 2004-05 to 2008-09 which would consider the past data pertaining to 2002-03 and 2003-04 also needs to be updated.

The GMOEA has in principle agreed to the modification proposed by the port provided the pre-berthing detention on account of shippers is not considered in the calculation. Since the condition of 90% accumulation of cargo was not approved by this Authority for the period from December 2002 to the operational year 2004-05, the benchmark level which is reportedly computed after applying this factor needs to be modified for the period prior to October 2004 for determining the refundable amount for this period. The port is, therefore, allowed to make necessary modification in the calculation of pre-berthing detention time for the period from December 2002 to 1 October 2004, based on the ELT scheme then applicable for calculation of refund. This modification should, however, not be applied for the subsequent years for arriving the benchmark level reckoning with five years data.

The data pertaining to 2002-03 and 2003-04 based on the condition of 90% of cargo accumulation is available with the port which should be applied for arriving at pre-detention time from the operational years 2004-05 to 2007-08.

As already mentioned earlier, while applying the condition of 90% cargo accumulation in the benchmark level, the same yardstick should be maintained while determining the cut-off time with reference to the actuals.

- (vi). There was a complaint from the GMOEA that the port has not effected refund claims of the excess billing made by the port for the operational years 2002-03 and 2003-04 in line with the Order passed on December 2006. The port has confirmed that refund of excess billing has been remitted by first week of September 2008 and has also furnished a compliance report in this regard.

10. In the result, and for the reasons given above, and based on collective application of mind, this Authority approves the following decision with reference to the proposal of the MOPT on the ELT scheme:

- (i). The ELT scheme not to be implemented for the period 1 October 2007 to 10 January 2008.
- (ii). The proposal of the MOPT for revision in the parameters prescribed for cut off limits of the ELT scheme applying 70% of the handling capacity from 11 January 2008 onwards is not approved. The MOPT is advised to continue implementing the existing ELT scheme without any modification.
- (iii). The port can make necessary modification in the calculation of average pre-berthing detention time for the operational years 2002-03 and 2003-04 taking into consideration the factors as per the then applicable ELT scheme only for the purpose of determining the refundable amount for the concerned period.

(Brahm Dutt)
Chairman