

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

GNo. 188

New Delhi,

07 November 2008

NOTIFICATION

In exercise of the powers conferred by Sections 48 and 49 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 levy of special rate on foreign naval vessels arriving at its Port as in the Order appended hereto.

(Brahm Dutt)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/36/2007 - MOPT

Mormugao Port Trust

- - -

Applicant

ORDER

(Passed on this 30th day of September 2008)

This case relates to the proposal received from Mormugao Port Trust (MOPT) for levy of special rate on foreign naval vessels arriving at its Port.

2.1. The MOPT has made the following main points in its proposal:

- (i). Frequency of defence vessels of foreign origin calling the port has increased in the recent past. On an average, 14 foreign naval vessels visit the port annually. Based on the statistics available with the port for the last 3 years, the GRT of these vessels varies in the range from 605 to 40600.
- (ii). As per the existing Scale of Rates (SOR) and the conditionalities governing the SOR, defence vessels of foreign origin on goodwill visit are not charged port dues. However, other charges like pilotage berth hire, wharfage and miscellaneous charges are levied on these vessels as applicable for any other vessels.
- (iii). In the absence of sufficient number of general cargo berths, these non-cargo vessels are compelled to be berthed even in preference to cargo vessels. Such foreign naval (non-cargo vessels) are usually berthed at berth nos.8, 10 and 11 in addition to they being anchored at mooring dolphins and in stream.
- (iv). The port does not realise any cargo related charges from foreign naval vessels since they are non-cargo vessels. However, it has to be recognised that these vessels occupy the general cargo berths at the cost and convenience of the port and of other cargo vessels. Thus, productivity of loading/unloading of cargo at berth nos. 10 and 11 is affected. Therefore, the revenue foregone on this account needs to be compensated.
- (v).
 - (a). The foreign naval vessels have very low GRT as compared to cargo vessels. The extent and scope of revenue loss has been determined for the size of vessel analogous to the average size of the foreign naval vessels handled at the general cargo berths and anchorages.
 - (b). The total revenue from a few sample vessels of cargo and non-cargo vessels taken at random at the cargo berths indicate that the total revenue foregone amounts to the cargo related charges only which is proposed to be recovered from foreign naval vessels by way of imposing a special rate.
- (vi). A statement showing revenue incidence at various position and the number of naval vessels handled at this port for the period from 1.4.2004 to 31.3.2007 has been furnished. A summary of the working furnished by the MOPT to arrive at the proposed special rate is given below:

Sl. No.	Particulars	Calculation
1.	Average GRT of Foreign Naval vessels called at various positions at Mormugao Port for the period from 2004-05 to 2006-07.	7955 GRT
2.	Average GRT of cargo vessels handled at berth nos. 8, 10 and 11 and Mooring dolphins.	20863 GRT

3.	Revenue earned on handling of Foreign Naval vessels with different GRT at: Berth no.8 (9769 GRT) Berth no.10 (4812 GRT) Berth no.11 (605 GRT) Mooring Dolphins (40600 GRT)	Rs.235115 Rs.648835 Rs. 7937 Rs.562956
4.	Revenue earned on Cargo vessel with analogous GRT when handled at General Cargo berths	Rs.636411
5.	Revenue earned on Foreign Naval vessel	Rs.235115
6.	Difference in the amount earned by cargo and non-cargo vessels at General Cargo berths	Rs.401296
7.	Rate per unit GRT = 401296 ----- 7955 (GRT) x72(hrs.)x (Rs.) 40.35 (exchange rate adopted for conversion in dollar terms)	US \$ 0.017363

- (vi). It has accordingly proposed to levy special charge of U.S.\$ 0.017363 per GRT from the foreign naval vessels for occupancy of general cargo berth(s) and mooring dolphins.
- (vii). It expects to generate additional income of Rs.60 lakhs per annum from the proposed levy on foreign naval vessels based on the average calls made by such vessels in the last 3 years.

2.2. The MOPT has requested to approve the proposed special rate of US \$ 0.017363 per GRT on foreign naval vessels to compensate for loss of revenue due to handling of foreign naval (non-cargo) vessels at berths, mooring dolphins and safe anchorages at the port.

3. In accordance with the consultative procedure prescribed, the MOPT proposal was forwarded to the concerned user organisations as well as Indian Navy seeking their comments. The comments received from user organizations and Indian Navy were forwarded to MOPT as feedback information. The MOPT has furnished its comments on the comments of user organisations.

4. A joint hearing in this case was held on 14 July 2008 at the MOPT premises. The MOPT made a power point presentation of its proposal. At the joint hearing, the MOPT 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 the information collected during the processing of this case, the following position emerges:

- (i). The proposal of the Mormugao Port Trust is to introduce a special rate on foreign-naval vessels to compensate for the opportunity loss of revenue forgone by the port in the cargo related charges on account of accommodating foreign naval vessels at its berths and mooring dolphin.
- (ii). The foreign naval vessels (non-cargo vessels) are reportedly berthed at berth nos.8, 10 and 11 in addition to they being anchored at mooring dolphins and in stream. The port has reported that on an average 14 foreign naval vessels arrive at the port annually.

Since they are non-cargo vessels, the port does not realise any cargo related charge from the foreign naval vessels. At times, the foreign naval vessels are berthed even in preference to cargo vessels. The port has reported that on five to seven occasions during

a year, vessel working at berth no.8 had to be un-bethered to accommodate foreign naval vessels.

In view of the position explained above, and also recognising that the foreign naval vessels do occupy the cargo handling facilities which results in loss of revenue to the port which it otherwise would have collected from the cargo vessels, the port has proposed to introduce a special rate on such vessels.

- (iii). It is relevant to mention that the Visakha Container Terminal Limited had also filed somewhat similar proposal for levy of charge on non-container vessels which use the land side facilities of the terminal for minor repairs, fumigation, etc., but no wharfage revenue accrued to the Terminal operator from such vessels as there was no ship/ shore transfer involved. This Authority vide Order No TAMP/12/2007-VPT dated 7 August 2007 observed that it would be unreasonable to allow facilities of the terminal to be used free of cost and hence the operator should be compensated. Accordingly, the proposal of the VCTPL for levy of charge on such non-cargo/ non-container vessels for use of terminal facilities was approved.

In the instant case, the loss to MOPT in cargo handling revenue on account of accommodating the foreign naval (non- cargo) vessel cannot be denied. There is, therefore, prima facie a case for compensating the port at least partially for the cargo handling revenue forgone by the port by accommodating foreign naval vessel.

- (iv). (a). The Flag Commanding Officer of Indian Navy is of the view that defence vessels are of diplomatic in nature and aimed to enhance bilateral relationship between the two maritime countries and hence the port should refrain from introducing such special charge.

It has to be recognised that the foreign defence vessel coming on good will visit are already exempted from levy of port dues as per the prevailing existing Scale of Rates. The MOPT has reported that the purpose of the visit by most of the foreign defence vessels is for rest and recreation.

Notwithstanding this position, there is no justification why the port should not be compensated for the cargo related revenue loss which the port otherwise would have earned from its core business.

It has to be recognised that berthing space is a scarce resource and needs to be used optimally. The argument of the MOPT to compensate for the loss of revenue needs to be viewed from the angle of not requiring other commodities handled at the port to bear the loss of revenue forgone by port.

- (b). The Indian Navy has contended that cargo vessels are not handled at West of Dolphin. As such the port does not earn any cargo related income at West of Dolphin and hence the special rate should not be applied at Mooring Dolphin. The port has denied the contention of the Indian Navy and has furnished the details of vessels handled at West of Mooring Dolphin in the last three years 2004-05 to 2006-07 to substantiate its claim.

- (c). The Goa Chamber of Commerce has made a general remark that the existing provision is flowing from some policy direction from the Government. Since the existing Scale of Rates prescribes a concession to foreign naval vessel, the GCCI is of the view that any change during the current validity period may cause misconception with service providers and vessel agents abroad dealing with such foreign Government defence vessels.

In this context it is relevant to mention that the calculation of special rate furnished by the MOPT does not take into account the loss of revenue to the port on account of concession granted to this category of vessel in port dues. It pertains to loss of revenue in the cargo related charges. The existing concession available to foreign naval vessels in port dues is allowed to continue as explained in the subsequent paragraph.

- (v). The special rate proposed by the port is not a cost based rate. The proposed special rate of US\$ 0.01763 per GRT is based on the random sample of a few cargo and foreign defence vessels extrapolated by the MOPT from the past actuals.

The revenue for the size of cargo vessel analogous to the average size of the foreign naval vessels handled at the general cargo berths/anchorage has been considered in the calculation. The actual revenue from cargo vessels considered in the calculation includes both the revenue from cargo related charge and vessel related charges but reportedly excludes port dues.

The revenue reported from cargo vessel of analogous size handled at berth no. 8 is Rs.636411 and the revenue from a foreign naval vessel closer to the average GRT of the vessel is Rs.235115. The loss of revenue is thus estimated at Rs.401296. The differential revenue is spread over the average GRT of foreign naval vessels and considering the average stay of vessel at around 72 hours, the special rate is arrived at US\$ 0.01763 per GRT.

The detailed calculation furnished by the port in support of the rate proposed was also circulated to all the concerned users / user association along with the proposal. None of the users / user associations has raised any objection on the approach followed by the port in arriving at the proposed rate.

Relying on the detailed calculation furnished by the MOPT, this Authority accepts the special rate proposed by the MOPT subject to modifying the rate with reference to the exchange rate of 1 US\$ = Rs.48.43 prevailing at the time of analyzing this case as against 1 US\$ = Rs.40.35 considered by the MOPT. Accordingly, the revised special rate will work out to US\$ 0.0145 per GRT per hour or part thereof.

- (vi). The special rate on foreign defence vessel proposed by the MOPT is not for vessel related service. It is to partly compensate for the loss for revenue from cargo handling activity. The rate has been proposed by the port on per GRT basis.

If a fixed rate per vessel is prescribed, then perhaps the foreign naval vessels which are smaller in the size may have to pay a higher tariff in comparison to vessels with higher GRT. It is, therefore, found appropriate to allow the proposal of the MOPT of linking the special rate on foreign naval vessel with the varying size of vessels.

Even though the summary of the proposal indicates that the special rate is on per GRT basis, from the calculation furnished by the port, it is observed that the proposed rate should be per GRT per hour or part thereof basis. The unit of levy is modified to reflect the correct position in line with approach followed by the MOPT in the calculation of the special rate.

- (vii). As already mentioned earlier, the existing Scale of Rates of MOPT exempts levy of port dues on defence vessels of foreign origin on goods will visits. This provision prescribed in the Scale of Rates of the MOPT is in vogue even prior to the constitution of this Authority in April 1997.

The MOPT in its initial proposal has stated that port dues are statutorily not chargeable on defence vessels of foreign origin. It has subsequently at the joint hearing, requested this Authority to delete the existing provision exempting this category of vessel from levy of port dues. This proposal was not a part of its initial proposal which was forwarded as part of consultation process to the concerned users / user association.

The Scale of Rates of Mumbai Port Trust, Cochin Port Trust, Paradip Port Trust and Chennai Port Trust exempt levy of port dues in respect of naval vessel / defence vessels. But they do not clearly stipulate that foreign defence vessel on goodwill vessel are to be exempted. There is no provision to exempt port dues for such category of vessels in the Scale of Rates of other major ports of India.

Insofar as the tariff arrangement at a Major Port Trust is concerned, the Major Port Trust Act, is the relevant legislation. The Major Port Trust Act, 1963 does not contain any explicit provision to exempt levy of port dues on defence vessels of foreign origin. There is no

specific direction from the Ministry of Shipping, Road Transport and Highways (MSRTH) to this Authority to exempt foreign naval vessels on goodwill visit from levy of port dues.

Since there is no clarity as to how the existing exemption provision is introduced in the Scale of Rates of the MOPT, it is found appropriate to advise the port to examine the circumstances under which this condition was introduced in its Scale of Rates initially and whether the prevailing applicable legal provision require them to exempt port dues on certain categories of vessels. A suitable modification in the Scale of Rates in this regard may be proposed by the MOPT while formulating the proposal for comprehensive revision of the Scale of Rates which is due in March 2009. Till such time, the existing provision may continue without any modification.

7.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the special rate of US\$ 0.0145 per GRT per hour or part thereof leviable on foreign naval vessels for occupation of general cargo berth and Mooring Dolphin.

7.2. The rate approved will become effective after expiry of 30 days from the date of notification of the Order in the Gazette of India and shall be reviewed along with the general revision of the Scale of Rates of MOPT which is due in March 2009.

(Brahm Dutt)
Chairman

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

F. No.TAMP/36/2007 - MOPT - Proposal from the Mormugao Port Trust for levy of special rate on foreign naval (non-cargo) vessels arriving at its port.

1. The summary of comments received from the user / user organisations and comments of the Mormugao Port Trust (MOPT) thereon are tabulated below:

Sl. No.	Comments of user / user organisations	Comments of MOPT
1.	Goa Chamber of Commerce & Industry	
(i).	(a). The existing SOR published on 27 November 2006, under Section A - Port dues stipulates that port dues shall not be levied on Research vessels of Government of India and defence vessels of Foreign Government coming on goodwill visits. (b). It appears that non-applicability of port dues for the defence vessels of foreign Government coming on a goodwill is based on the directions of the Central Government issued from time to time under Section 111 of the Major Port Trusts Act. (c). It can also be viewed that Indian Naval Vessels on goodwill visit abroad are enjoying such concession and in reciprocation thereof such concession are provided to defence vessels of foreign Government on a goodwill visit. (d). In view of the above, the Authority is requested not to delete the concession provided for defence vessels of foreign Government coming on goodwill visit to India in view of the policy directions issued by Government of India under Section 111 of Major Ports Act, 1963. (e). Having provided such a concession in the Scale of Rates and notified in Official Gazette, it will not be appropriate to make any change during the currency of its validity, as it will cause misconception with service providers and vessels agents abroad, dealing with such foreign Government defence vessels.	Para 2.17.1. of the revised tariff Guidelines provides that whenever a specific tariff for a service / cargo is not available in the notified Scale of Rates, the port can submit a suitable proposal. In accordance with these guidelines, the present proposal is submitted to the TAMP for approving a specific levy on the foreign navy vessels.
2.	Flag Officer Commanding of Indian Navy	
(i).	The port has invariably offered alongside berth for visiting foreign non-cargo vessels only when the berth was vacant and no movement was expected at the berth. In the event of requirement of berth for cargo vessels, the foreign non-cargo naval vessels have been moored at West of Dolphin. This arrangement as such does not hamper any cargo handlings operations. Thus, the port loosing out on cargo handling charges due to	This contention is entirely incorrect. The working cargo ships have been displaced or asked to postpone their visit to the port to accommodate foreign naval ships. Also, the implication that no cargo loading or discharging is done at the West of Mooring Dolphin I is wrong. In the fair season, vessels are handled at the West of Mooring Dolphin I.

	berthing of foreign naval ships need to be examined separately.	The foreign cargo vessels berthed at West of Mooring Dolphin during the last three years are detailed below:- <table><tr><th>Year</th><th>No. of vessels</th><th>Berth days</th><th>Avg/Berth days</th></tr><tr><td>2004-05</td><td>7</td><td>25.31</td><td>3.62</td></tr><tr><td>2005-06</td><td>7</td><td>31.16</td><td>4.45</td></tr><tr><td>2006-07</td><td>32</td><td>131.26</td><td>4.10</td></tr></table> It is also noteworthy that due to preoccupation of berth no. 8 by foreign navy vessels, oil tankers are kept waiting for berths. During the year 2004-05, five tankers were unberthed in order to accommodate foreign navy vessel and after vacation of berth, these tankers were berthed at berth no. 8. In the year 2006-07, seven such incidences have taken place. Such movements severely affect the efficiency parameters of the port, such as increase in turn around time per vessel, increase in pre-berthing detention per vessel. The entire berthing programme also gets disturbed due to accommodation of foreign navy vessels.	Year	No. of vessels	Berth days	Avg/Berth days	2004-05	7	25.31	3.62	2005-06	7	31.16	4.45	2006-07	32	131.26	4.10
Year	No. of vessels	Berth days	Avg/Berth days															
2004-05	7	25.31	3.62															
2005-06	7	31.16	4.45															
2006-07	32	131.26	4.10															
(ii).	Special charges to foreign naval ships may be levied provided the berth is allocated to the visiting ships for the entire duration of stay without any discontinuity/shifting. However, for berthing at West of dolphin, there is no case for levying special charges as no merchant cargo vessels are moored West of Dolphin.	It agrees with the submissions. However, the premise for not charging special charges at West of Mooring Dolphin are totally wrong as explained in (i) above.																
(iii).	It is reiterated that the goodwill visits of foreign warships are also diplomatic in nature and aimed to enhance bilateral relationship between the two maritime countries. Hence such visits are of national importance, necessitating consideration on a broader perspective.	It agrees with the submissions of the Indian Navy. However, it is noteworthy that most of these visits have rest and recreation as their primary objective and other reasons given are only secondary in nature. Regardless of the nature of these visits, the port is constrained to push working cargo vessels out and accommodate foreign naval vessels, which not only pay much less on account of size and no cargo, but also affects its annual cargo throughput.																
(iv).	As the Indian Naval vessels visiting foreign ports are not being charged enhanced rates, the levy of special rates proposed on defence vessels of foreign origin may be at variance with established norms.	It is unable to comment on the charges levied on Indian naval ships at foreign ports. However, whether special rates are charged or not charged is not stated very clearly by the Indian Navy simply because different countries would have different rates and different established norms which could be at variance with its line of thinking and objectives.																
(v).	Since cargo related charges are not to be realised by port from foreign naval vessels, making good deemed revenue foregone on such account may not be in order.	As stated in the earlier para, berthing of foreign naval vessels at a working berth implies pushing out a working cargo vessel affecting not only its income but also cargo throughput. In view of this, it does not agree with the contention of the Indian Navy.																
3.	Mormugao Ships Agents' Association																	
(i).	It agrees with the proposal submitted by the port. It has no comments to furnish.	No comments furnished.																

2. A joint hearing in this case was held on 14 July 2008 at the Mormugao Port Trust premises. The MOPT made a power point presentation of its proposal. At the joint hearing, the following submissions were made by the MOPT:

Mormugao Port Trust (MOPT)

- (i). The foreign naval vessels are to be berthed at the cargo berths. We, therefore, lose revenue. The proposed charge is to compensate the revenue loss.
- (ii). We also request the restrictive clause on 'Port dues' should be removed.

.....