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Tariff Authority for Major Ports

G No. 114 **New Delhi,** **22 April 2013**

NOTIFICATION

In exercise of the powers conferred under Sections 48 & 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from the Mumbai Port Trust for fixation of Stevedoring rate in respect of Cargo loaded in Coastal barges as in the Order appended hereto.

(T.S. Balasubramaniam)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/59/2012-MBPT

Mumbai Port Trust - - - **Applicant**

QUORUM:

(i). Smt. Rani Jadhav, Chairperson
(ii). Shri. T.S. Balasubramaniam, Member (Finance)
(iii). Shri. C.B. Singh, Member (Economic)

O R D E R
(Passed on this 1st day of April 2013)

This case relates to the proposal received from Mumbai Port Trust (MBPT) for fixation of Stevedoring rate in respect of Cargo loaded in Coastal barges.

2. The MBPT had earlier vide its letter dated 27 August 2012 filed a proposal for fixation of stevedoring rate in respect of the cargo loaded in coastal barges. However, in the absence of a request from the port to amend its Scale of Rates, Authority had vide its letter dated 4 September 2012 requested MBPT to file a suitable proposal for the amendment envisaged.

3.1. Subsequently, the MBPT vide its letter dated 20 September 2012, has filed the proposal enclosing a copy of table paper placed before its Board in its meeting held on 27 March 2012 along with changes proposed to sl. No.14 of section 2.18 of the scale of rates.

3.2. The main points made by MBPT in its letter dated 20 September 2012 are summarized below:

(i). Charges for providing on board stevedoring services payable by the Indenters/Vessels owners/Container operators have been prescribed at Section 2.18 of the Scales of Rates.

(ii). Sl. No. 13 and 14 of section 2.18 provides for recovery of stevedoring charges for "containers brought by barges" and " cargo brought by coastal barges" respectively.

(iii). With reference to Sl. No. 14 of Section 2.18 of Scale of Rates under the heading of Commodity /Activity it is stated as "Cargo brought by Coastal barges".

(iv). Board accorded sanction vide Resolution no.169 of 26.11.2002 for fixation of stevedoring rate for cargo brought by coastal traffic in conformity with the Government policy. Accordingly, the stevedoring rate for cargo brought by coastal barge was approved by the TAMP vide its order dated 10 September 2003; which had been revised from time to time. The present rate of to ₹25.60 per tonne was approved with effect from 22 December 2012 vide TAMP's order dated 11 October 2011.

(v). However, no stevedoring rates have been prescribed/provided for cargo loaded on coastal barges.

(vi). In the recent past, coastal barges arrived in the port for loading the cargo.

(vii). As the methodology of loading of cargo on coastal barges is similar to that of discharging of cargo from coastal barges, the stevedoring rate applicable for cargo loaded on the coastal barges will be the same as that of cargo brought by coastal barges. Work of loading of cargo on the coastal barges was carried out and the stevedoring rate applicable for cargo brought by coastal barges was applied for cargo loaded on the coastal barges.

(viii). In order to provide adequate clarification, the tariff item at Sl. No.14 of section 2.18 is proposed to be amended as "Cargo handled by Coastal barges". It has got the approval of Board of Trustees and charges @ ₹25.60 per tonne at Sl.no. 14 of section 2.18 of the scale of rates as levied for cargo brought by /loaded into the coastal barges will continue to be levied.

(ix). There is no financial implication.

4. The table paper placed before its Board did not propose any amendment to the Scale of Rates, but concluded by stating that TAMP will be suitably informed.

5. The description of tariff item at Sr. No. 14 of section 2.18 of SOR proposed to be amended is as follows:

Sr. No.	Commodity / Activity	Basis of charges	Stevedoring rate (without gear) (in ₹)		Ceiling Rate for supply of gear by the port (in ₹)
(1)	(2)	(3)	(4)		(5)
			Foreign	Coastal	
14.	Cargo handled by coastal barges	Per tonne	-	25.60	16.90

6. The comparative position of the existing provision prescribed at Sr. No. 14 of section 2.18 and the proposed change in the said tariff item is as follows:

'2.18 charges for providing On Board Stevedoring Services payable by the Indenters/Vessel Agents/Vessel Owners/Container Operators'

	Existing					Proposed				
Sr. No.	Commodity/ Activity	Basis of charges	Stevedoring rate (without gear) (in ₹)		Ceiling Rate for supply of gear by the port (in ₹)	Commodity/ Activity	Basis of charges	Stevedoring rate (without gear) (in ₹)		Ceiling Rate for supply of gear by the port (in ₹)
(1)	(2)	(3)	(4)		(5)	(6)	(7)	(8)		(9)
			Foreign	Coastal				Foreign	Coastal	
14.	Cargo brought by coastal barges	Per tonne	25.60	25.60	16.90	Cargo handled by coastal barges	Per tonne	-	25.60	16.90

7. In accordance with the consultation process prescribed, the proposal of the port vide its letter dated 20 September 2012 was circulated to the users / user organisations vide our letter dated 8 October 2012 and 5 November 2012 with a request to send their comments. We have not received the comments of the stakeholders except from the Indian National Shipowners' Association which has stated that it has no comments to offer vide its email dated 18 December 2012.

8. Based on a preliminary scrutiny of the proposal, the MBPT was requested to furnish additional information / clarifications vide our letter dated 8 January 2013. The MBPT vide its letter dated 18 January 2012 has responded. The queries raised by us and the response of MBPT are tabulated below:

Sl. No.	**Queries raised by us**	**Response of MBPT**
1.	The table paper (vi) dated 21 September 2012 furnished by the MBPT under cover of its letter No. FA/ACC/183(IV)/OBL/9330	There is no specific provision in Section 2.18 of the Scale of Rates for cargo loaded on the barges. The existing

	dated 20 September 2012 reports about stevedoring charges being levied by MBPT in different scenarios taking recourse to Sr. No. 14 of Section 2.18 of the Scale of Rates (SOR) of the existing SOR of MBPT. In this context, it is brought to the notice of the MBPT that section 2.18 of the SOR provides for levy of charges at ₹.25.60 per tonne for on-board stevedoring services for cargo brought by coastal barges. This provision does not provide for levy of charges for on-board stevedoring services for cargo loaded into coastal barges. This provision also does not prescribe any slab-wise rates. Further, whenever a specific tariff for a service/cargo is not available in the notified Scale of Rates, a methodology is prescribed in the tariff guidelines of March 2005 (clause 2.17.1 to 2.17.4) to enable a Port Trust to meet the situation. That being so, the MBPT is requested to furnish / clarify the following:	provision at Sr. No.14 of the said Section mentions only about cargo brought by the coastal barges. It is, therefore, a rate for “cargo handled by coastal barges” has been proposed. In the course of evolution of Scale of Rates, the distinction between stevedoring operations of import and export has been removed from 31 December 2006. Thus, while the earlier Scale of Rates in the year 2002 was having separate stevedoring rates for import and export, the revised Scale of Rates from 31 December 2006 and now from 2011 onwards does not distinguish between import and export of stevedoring charges.
(i).	The “authority” to apply the rates approved only for cargo “brought by barges” on the cargo “loaded into barges”.	It is true that the tariff guidelines 2005 are applicable in situations where specific rates do not exist. Since the operations continued in the meanwhile and the entire stevedoring rate structure now does not distinguish between import and export operations, based on nature of operation which are exactly similar to the import, the existing import rates were applied. Since the methodology of loading of cargo on coastal barges is similar to that of discharging of cargo from the coastal barges, the stevedoring rate applicable for cargo brought by coastal barges was applied for cargo loaded on coastal barges in the recent past. Approval of FA & CAO has been obtained.
(ii).	The “authority” to restrict the application of prescribed rate to barges having less than 1000 GRT.	Note 1(ii) under Section 2.17 of Scale of Rates states that the term vessel will include the boats, barges and craft of GRT of 1000 and above. Hence, for barges below 1000 GRT, the rate at Sr. No.14 of Section 2.18 of Scale of Rates was applied for cargo brought by barges and for barges of more than 1000 GRT treating them as coastal vessels.
(iii).	Justification / reason for not applying the prescribed rates irrespective of the GRT of barges.	
(iv).	Consent of the users as required under clause 2.17.3 of the tariff guidelines of March 2005 for application of approved rate for loading the cargo into the barges when a specific rate for this activity is not prescribed in the existing SOR of MBPT, as admitted by the port.	Port users never raised any dispute on applicability of this rate and since the methodology of loading of cargo on coastal barges is similar to that of discharging of cargo from the coastal barges, the stevedoring rate applicable for cargo brought by coastal barges was applied for cargo loaded on coastal barges.
(v).	(a). The scenario (ii) described in the Table paper (vi) is not clear. The MBPT to amplify to give clarity.	In respect of barges (having GRT more than 1000) involved in carrying the cargo between MBPT and other nearby Indian Ports, the barges used to be treated as

		coastal vessel and the rates prescribed in Schedule 2.18 of Scale of Rates were applied depending upon the exact nomenclature of cargo.
	(b). The reference to the tariff item approved in the existing SOR of MBPT covering the scenario (ii) to be furnished.	Note 1 (ii) under Section 2.17 of Scale of Rates states that the term vessels will include the boats, barges and craft or GRT of 1000 and above.
(vi)	The reference to the tariff item prescribed in the existing scale of rates of MBPT, if any, covering the scenario (iii) described in the Table paper (vi) with justification for applying the foreign rate as per type of cargo for rendering stevedoring services when the cargo is loaded into the coastal barges and unloaded from the coastal barges.	Stevedoring charges used to be recovered in respect of cargo brought by coastal barges depending upon the status of the mother vessel anchored in the stream. This in respect of vessels classified as “Foreign” vessel in terms of para 1.2(i) of the General Terms and Conditions of Scale of Rates, the barges which unloaded / loaded the cargo on “Foreign” vessels were charged stevedoring rate under the column “Foreign” of para 2.18 of Scale of Rates depending upon the nature (nomenclature) of cargo enumerated under Sl. No.1 to 9 and 16 Section 2.18 of Scale of Rates. Cargo unloaded from a foreign going vessel into the barges will attract foreign vessel rate and not the coastal one. This is due to the fact that the cargo will continue to assume the status of import cargo.
(vii)	The reference to the tariff item prescribed in the existing SOR of the MBPT, if any, covering the scenario (iv) described in the Table paper (vi).	Stevedoring charges used to be recovered in respect of cargo brought by coastal barges depending upon the status of mother vessel anchored in the stream. Thus in respect of vessels classified as “Coastal” vessel in terms of para 1.2(i) of the General Terms and Conditions of Scale of Rates, the barges which handle the cargo unloaded / loaded on “Coastal” vessel were charged stevedoring rate under the column “Coastal” of para 2.18 of Scale of Rates depending upon the nature (nomenclature) of cargo enumerated under Sl. NO.1 to 9 and 16.
(viii).	Scenarios (ii), (iii) and (iv) state, *inter alia*, that “rate for stevedoring as per type of cargo in terms of schedule 2.18”. The linkage between “type of cargo” and “schedule 2.18” to be explained.	As stated in the replies under v(a), vi and vii above, the stevedoring charges were levied depending upon the nature (nomenclature) of cargo / commodity in the barge classified at column 2 i.e. “commodity” under Sl. No.1 to 9 and 16 of 2.18 of Scale of Rates. In other words, stevedoring charges were not levied by invoking the provisions under Sl. No.14 of para 2.18 of Scale of Rates (₹25.60/- per tonne) but the same were levied depending upon the exact nomenclature of the cargo.

9. The Note 1 (ii) of Section 2.17 (composite berth hire charges) prescribed in the existing scale of rates of MBPT is reproduced below:-

"(ii) The term "vessel" will include the boats, barges and craft of GRT of 1000 and above".

10. A joint hearing in this case was held on 18 January 2013 at the Office of this Authority. The MBPT and ICC Shipping Association have made their submission.

11. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the 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.

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

(i) The schedule prescribed in the existing scale of rates of the MBPT provides for levy of different charges for providing On Board Stevedoring Services for various commodities / group of commodities at the rates prescribed in the said schedule. The rates prescribed vary from commodity to commodity.

One tariff item prescribed in the said schedule is "cargo brought by coastal barges". A uniform rate of ₹25.60 per tonne is prescribed for foreign and coastal for providing the service without gear. A separate rate of ₹16.90 per tonne under the same entry is prescribed for providing gear by the MBPT. The proposal before this Authority is limited to the extent of amending the existing nomenclature of the tariff item “cargo brought by coastal barges" as "cargo handled by coastal barges" to cover the export operation. The existing rates are proposed to be continued without any change.

(ii). (a). Looking to the nomenclature of the existing provision it is evident that the said provision provides for levy of the prescribed charge in the import cycle. It does not cover the operation involved in the export cycle. The application of the rate prescribed for import cycle for export cycle also, based on some internal approval, is not found to be in line with the tariff setting arrangement envisaged in the Statute.

(b). The existing provision does not restrict its application to the barge having GRT less than 1000. That being so, the prescribed rate needs to be applied irrespective of the GRT of the barges. Further, the provision requires the MBPT to apply the prescribed rate for cargo brought by coastal barges, which means that the rate of ₹25.60 per tonne requires to be applied uniformly without reference to types of cargo.

The provision relied upon by the MBPT to segregate the barges in terms of GRT of the vessel namely "barges having less than 1000 GRT" and "barges having more than 1000 GRT" for levy of charges in the Note prescribed is the schedule relating to levy of berth hire charges. It is not a common note applicable for the entire scale of rates of MBPT. That being so, the Note governs only the application of berth hire charges and extension of the said Note to govern the application of charges for providing on-board stevedoring services for cargo brought by coastal barges does not appear to be in line with tariff arrangement approved in the existing scale of rates of MBPT.

When no such segregation namely "barges having less than 1000 GRT" and "barges having more than 1000 GRT" is available in the approved scale of rates for levy of on-board stevedoring charges for cargo brought by barges, levy of charges for cargo brought by barges having more than GRT as per type of cargo does not appear to be covered by the tariff arrangement approved in the existing scale of rates of MBPT.

(c). As stated earlier, a uniform rate for foreign and coastal at ₹25.60 per tonne is prescribed as stevedoring rate for cargo brought by coastal barges. However, the MBPT has reported to be levying the foreign rate for the cargo unloaded from a foreign mother vessel and brought by coastal barges or loaded on to a foreign mother vessel from coastal barges depending upon the type of cargo. Likewise, the MBPT has reported levy of coastal rate for stevedoring as per types of cargo in case of cargo unloaded from coastal vessel and brought by coastal barges to the port and cargo loaded in coastal barges for subsequent loading on the coastal vessel. As stated earlier, different rates have been prescribed for different types of cargo. The method followed by the MBPT in this regard does not appear to be explicitly prescribed in the existing scale of rates of the port.

The scale of rates of MBPT approved in October 2011 prescribed a single rate for cargo brought by coastal barges irrespective of types of cargo. The scale of rates does not cover the scenarios explained above. The Statute requires the Major Port Trusts and the Private Terminals operating thereat to seek sanction of this Authority for levy of rates. The application of the rates by MBPT to the scenarios explained does not have sanction of this Authority or is not in compliance with clause 2.17.1 to 2.17.3 of the tariff guidelines of March 2005. The MBPT is, therefore, advised to come up with a well analysed proposal to provide for explicit provisions to cover the scenarios explained above except the current proposal which is discussed in the subsequent paragraph within three months from the date of notification of the order passed in this case.

(iii). With reference to the proposal of the port to amend the existing provision, it is noteworthy that reportedly the methodology of unloading of cargo from the coastal barges is similar to the loading of cargo on the coastal barges. Most of the parameters for unloading and loading operations are reported to be similar. The MBPT has reported that no additional cost is involved in loading of cargo onto the coastal barges. Notably, users consulted in the case have not objected to the proposal of the MBPT to amend the existing provision. MBPT has reported that it has also not received any representation from the users objecting to the proposal. That being so, this Authority does not have objection to approve the amendment proposed by the MBPT.

13.1. In the result, and for the reasons given above, and based on a collective application of mind, the existing entry at serial no. 14 in section 2.18 (charges for providing On Board stevedoring services payable by the Indenters/Vessel Agents/Vessel Owners/Container Operators) is replaced with the following entry :-

"

14.	Cargo handled by coastal barges	Per tonne	-	25.60	16.90

13.2. The MBPT is advised to come up with a well analysed proposal within three months from the date of notification of the Order passed in this case for incorporation of suitable provisions to cover the other scenarios explained earlier.

(T.S. Balasubramaniam)
Member (Finance)

SUMMARY OF THE ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY

F. No.TAMP/59/2012 - MBPT - Proposal received from the Mumbai Port Trust (MBPT) for fixation of Stevedoring rates in respect of Cargo loaded in Coastal barges.

A joint hearing in this case was held on 18 January 2013 at the Office of this Authority. The Mumbai Port Trust (MBPT) and ICC Shipping Association have made the following submission:

Mumbai Port Trust

(i). Briefly explains the port's proposal.

(ii). Stevedoring rates for cargo brought by barges are prescribed. Coastal barges have come in the past for loading of cargo. No rate for cargo loaded on barges is prescribed.

(iii). Most of the parameters for loading / unloading operations are same. There is no additional cost involved. Therefore, import rate may be allowed for export also.

(iv). We have not received any representation from the users against the proposal.

ICC Shipping Association

We have no objection to the proposal.