

(Published in Part - III Section 4 of the Gazette of India, Extraordinary)

TARIFF AUTHORITY FOR MAJOR PORTS

GNo.35

New Delhi

28 January, 2010

NOTIFICATION

In exercise of the powers conferred under Sections 48, 49 and 50 of the Major Port Trust Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal from the Mumbai Port Trust for levy of demurrage on vehicles imported through Mumbai Port as in the Order appended hereto.

(Rani Jadhav)
Chairman

Tariff Authority for Major Ports

Case No. TAMP/38/2008-MBPT

The Mumbai Port Trust

Applicant

ORDER

(Passed on this 30th day of December 2009)

This case relates to a proposal received from the Mumbai Port Trust (MBPT) for levy of Demurrage on vehicles imported through Mumbai Port.

2.1. The Mumbai Port Trust (MBPT) by letter dated 5 July 2008 has requested this Authority to approve levy of demurrage for imported vehicles (after free days) at Rs.500/- per unit per day from 1st day to 20th day, at Rs.1000/- per unit per day from 21st day to 40th day and at Rs. 2000/- per unit per day from 41st day onwards.

2.2 According to MBPT, the number of vehicles imported and exported through the Port is on the increase. The port has observed that there is a tendency among the importers to keep the vehicles for longer periods in the docks as the demurrage payable is very negligible.

3. MBPT while proposing the demurrage rates on imported vehicles as in para 2.1. above has compared the area occupied by the vehicles with (a) the area occupied by containers and (b) the quantity of steel coils that can be stored within the area occupied by vehicles. The Port has also considered the charges levied by Municipal Corporation of Greater Bombay for parking vehicles in the Municipal areas which works out to Rs.120 per day. According to MBPT the vehicles parked at Municipal areas are without any security cover, whereas the imported cars, costing Rs.20 lakhs to Rs.25 lakhs, when overstay in docks, get not only security cover but also get required infrastructural support.

4. In accordance with the consultative procedure prescribed, the proposal from MBPT was forwarded to the concerned users organizations for comments. The comments received from the user organizations were forwarded to MBPT as feedback information. MBPT has responded to the comments furnished by the users on its proposal.

5. MBPT was requested to furnish the following information / clarification vide our letter dated 10 October 2008. MBPT furnished its reply vide letter dated 20 December 2008. The details called for and the replies received are juxtaposed below:

Sl.No.	TAMP's queries	MBPT's comments
2(i)	Revenue implication of the proposed rate with supporting working sheets.	The revision has been proposed not to earn higher revenue but to ensure that the operational areas are optimally utilised. Higher demurrage charges per unit are proposed only with an intention to curb the tendency of importers of vehicles to use the port area for a prolonged period of storage. The increase is of the nature of congestion charge. Revenue implications are therefore not comparable and hence not been worked out. Also the income cannot be projected as demurrage is a penal charge.

(ii)	The number of vehicles imported through the Mumbai Port during the last three years.	<table><tr><th>Years</th><th>No. of vehicles</th></tr><tr><td>2005-06</td><td>2752</td></tr><tr><td>2006-07</td><td>3192</td></tr><tr><td>2007-08</td><td>7148</td></tr></table>	Years	No. of vehicles	2005-06	2752	2006-07	3192	2007-08	7148												
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(iii)	A statement showing particulars of imported motor cars cleared in the last three years (a) within the free days (b) during first 20 days after free days (c) during 21 st day to 40 th day after free days and (d) after the 40 th day.	<table><tr><th>Particulars</th><th>2005-06</th><th>2006-07</th><th>2007-08</th></tr><tr><td>Within free days</td><td>361</td><td>695</td><td>1490</td></tr><tr><td>During first 20 days after free days</td><td>1854</td><td>2275</td><td>4219</td></tr><tr><td>During 21st day to 40th day after free days</td><td>356</td><td>120</td><td>1093</td></tr><tr><td>After the 40th day.</td><td>181</td><td>102</td><td>346</td></tr></table>	Particulars	2005-06	2006-07	2007-08	Within free days	361	695	1490	During first 20 days after free days	1854	2275	4219	During 21 st day to 40 th day after free days	356	120	1093	After the 40 th day.	181	102	346
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(iv)	The demurrage amount collected from the imported motor cars during the different period slots referred to in sub-para (iii) above.	The demurrage amount collected from the imported motor cars during the different period slots as above is not available. The available details are as under : <table><tr><th>Year</th><th>Revenue – Import demurrage (Rs.)</th></tr><tr><td>2005-06</td><td>30,81,064</td></tr><tr><td>2006-07</td><td>26,05,614</td></tr><tr><td>2007-08</td><td>63,95,217</td></tr></table>	Year	Revenue – Import demurrage (Rs.)	2005-06	30,81,064	2006-07	26,05,614	2007-08	63,95,217												
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(v)	The basis on which the rates of Rs.500/-, Rs.1000 and Rs.2000/- per unit per day arrived at with calculation supported with cost elements.	In case of other cargo e.g. steel coils and containers the demurrage per day leviable is more than Rs.500/-. In order to remove anomaly in rates in demurrage, it has been proposed to recover demurrage @ Rs.500/- per day per vehicle for the first 20 days after LFD. Similarly, Rs.1000/- and Rs.2000/- have been fixed for the next 20 and from 41 st day onwards.																				
(vi)	As per the existing tariff structure, demurrage on all commodities is being recovered on a per tonne basis and not on the basis of the actual space occupied by the cargo. MBPT may clarify as to why in the case of imported motor cars and vehicles alone, it proposes to levy demurrage based on the area occupied. It is noteworthy that even for this type of cargo, when they are exported, the port intends to continue the existing levy of demurrage on a per tonne per day basis.	(1) The area occupied is considered only for the comparison purpose. The charges proposed are per unit and not based on the area occupied. (2) The motor vehicles cannot be stacked one above another unlike steel cargo, bagged cargo etc. and thus occupies more space. (3) It has been our experience that the import vehicles tend to overstay in the docks occupying larger areas causing congestion. (4) The lower demurrage charges contribute to the tendency of overstaying of import vehicles in the																				

		docks. (5) Also to cater to the additional traffic need and expected growth in automobile traffic, it is necessary that the transit areas in the port are not used as storage areas for imported vehicles. (6) In case of vehicles, the ratio of volume to weight is more as compared to other cargo. Taking into consideration all the factors, it has been proposed to levy charges of demurrage per unit in case of import of vehicles only. As an incentive of export, the no. of free days granted are 30 days as against 6 free days for import and it has been observed that cargo is generally cleared within free days.
(vii)	If MBPT considers recovery of demurrage on imported motor vehicles on the basis of the storage area occupied, it is requested to clarify why such a mode of levy cannot be adopted in respect of all commodities.	The charges proposed are per unit and not based on the area occupied. Area occupied by vehicles is considered only for the comparison purpose. The increase in rates of demurrage charges is proposed only to curb the tendency of the importers to use the port area for a prolonged period for storage of imported vehicles. It is not possible to specify demurrage on the basis of area for other cargo as there are no standardized norms for area occupied per unit weight which varies from cargo to cargo. The charges proposed will be at par with other charges. In case of other cargo the volume to weight ratio is less. Thus, levying demurrage on the basis of area occupied is not practicable.

6.1. A joint hearing in this case was held on 26 November 2009 in the office of this Authority. The MBPT and the concerned users have made their submissions.

6.2. As decided at the joint hearing, MBPT by letter dated 2 December 2009 furnished a dwell time analysis and the details of vehicles exported through the Port in the last three years as shown below:

(a) Vehicles exported:

Year	No. of vehicles
2006-07	109394
2007-08	84923
2008-09	65627

(b) Clearance Particulars:

Clearance	2006-07	2007-08	2008-09
Within free days	102560	82187	64646
During first 20 days after free days	5629	2368	848
During 21 st day to 40 th day after free days	1005	329	108
Beyond 40 th day	200	39	25

7. 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 are also available at our website <http://tariffauthority.gov.in>

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

- (i) Presently, demurrage on imported vehicles is prescribed in the Scale of Rates of MBPT at Rs. 37.50 per tonne per day for the first 20 days, at Rs. 56.25 per tonne per day for the next 20 days and at Rs. 75 per tonne per day from the 41st day onwards.
- (ii) MBPT has stated that imported vehicles on an average weigh 1000-1500 kgs. and occupy an area of 18-20 sq. mtrs. This apparently includes the vacant space to be maintained between vehicles while parking. For an imported vehicle which stays beyond the free period, demurrage is recovered @ Rs.37.50 per tonne per day which works out to Rs.37.50 per day per vehicle i.e. Rs.2.08 on "per square meter" basis. MBPT has compared the area occupied by steel coils which weigh on an average between 15-22 tons. A coil of 15 tonne occupies area of 1 sq.mtr. The demurrage for steel coils @ Rs.37.50 per tonne per day works out to Rs.562.50 for an area of 1 sq.mtr. MBPT has also compared the area occupied by containers vis-a-vis vehicles. A 20' container occupies an area of 160 sq.ft. (approx.15 sq.mtrs.) similar to that occupied by a car. For the containers stored in the docks, two types of charges are recovered i.e. container related charges @ US \$ 2.5 per day and demurrage on cargo @ Rs.37.50 per ton per day for the first 20 days after the free days. Thus on an average Rs.640/- per day is recovered for storing a loaded container in the docks. The Port has, however, clarified that the charges proposed are per unit and not based on the area occupied and the area occupied mentioned in the proposal is only for the purpose of comparison.
- (iii) The Port has justified the proposed levy stating that motor vehicles, which cannot be stacked one above another, occupy considerable ground space and the present demurrage rate which works out to "Rs. 2.08 per square meter" (vide para (ii) above) in the case of motor cars encourages the importers of the vehicles to store them in the docks area which affects the smooth cargo operations inside the docks. The Port has also stated that in respect of export of vehicles, pre-shipment storage facility of 30 days free period is provided at the designated areas, which are away from the docks.
- (iv) There could be an argument that the storage rates should be proposed with reference to market value of land and the area occupied. It may be relevant here

to recognize that the current market value of land inside the notified dock area may not be readily available. Further, demurrage rates are not strictly fixed following the methodology adopted for determining lease rentals/license fees. The storage area of a port needs to be used for transit purposes and any long stay of cargo thereat can only be at the expense of productivity and other user groups. Demurrage rates are generally prescribed keeping in mind the need of cargo to remain inside for a limited period and then to discourage long stay. It may be significant here to point out that demurrage charge is leviable after allowing a specified free period which provides a reasonable opportunity to the Trade to evacuate their consignment from the docks. Seen in this perspective and also in the light of the increasing import of motor cars and the reported incidence of long stay of such cars inside the dock area, the proposal of MBPT is found appears to be reasonable. In the absence of any method to determine the demurrage rate for imported cars on a stand alone basis, the port has proposed the rate by comparison.

- (v) The proposal to increase the demurrage charges on imported vehicles, according to MBPT, is not intended to earn more revenue but to ensure that the operational areas are optimally utilised and transit areas in the port are not used as storage areas. As per the details furnished by MBPT, during the three years of 2005-06 to 2007 -08, the number of vehicles imported was 13092 of which 2546 were cleared within the free period, 8348 were cleared during the first 20 days after free days, 1569 were cleared during 21st day to 40th day and the balance 629 cleared after the 40th day. Since, 10894 vehicles (83%) could be cleared only within 20 days after the free period, there appears to be some genuine difficulties in complying with the requisite formalities before clearance of the imported vehicles from the Docks. Therefore, this Authority finds it reasonable to provide some relief for the cars cleared within the first slab. Towards this end, the proposed rate of Rs. 500/- per day per vehicle for the 1st slab of demurrage is approved with a reduction of 20%. The proposed rates for the remaining slabs are approved without any modification.

9. In the result, and for the reasons given above, this Authority based on a collective application of mind, approves replacement of the existing schedule under Sec 3.1. (B) Demurrage in the MBPT Scale of Rates as under:

“3.1. (B) Demurrage:

On expiration of free days, save as hereinafter provided, demurrage will be charged for the period of storage on all goods (except mails, post parcels, diplomatic postal bags and personal baggage irrespective of weight per parcel, bag etc.) remaining uncleared, at the following rates :

Class of goods (1)	How charged (2)	R A T E (Rs)		
		For first to 20 th day (3)	For 21 st to 40 th day (4)	From 41 st days onwards (5)
(a) In respect of all goods classified in the wharfage	Per tonne per day or part thereof	37.50	56.25	75.00

schedule in Section-3.1(A) above, other than Motor Vehicles (Import)				
b) Motor Vehicles (Import)	Per vehicle Per day	400	1000	2000

NOTE: The personal baggage will be charged at the rate of Rs.15 per tonne per day or part thereof."

10. The amendment to the Scale of Rates of MBPT shall take effect after expiry of 30 days from the date of notification of this Order in the Gazette of India.

(Rani Jadhav)
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.

No.TAMP/38/2008-MBPT - Proposal from Mumbai Port Trust for levy of demurrage on vehicles imported through Mumbai Port.

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

<u>Sl.No.</u>		<u>Users' Comments</u>	<u>MbPT's Comments</u>
		<u>Indian Merchants' Chamber</u>	
1		Auto vehicles cannot be considered or compared with import of Steel Coils.	Comparison of vehicles with steel coils is made only for the purpose of demurrage recovered vis-à-vis the area occupied. Although a steel coil of 15 tonnes occupies an area of 1 sq.mtr. an amount of Rs.562.50 per day is recovered @ Rs.37.50 per ton per day as against Rs.2.08 for the same area/period occupied by a vehicle. The port is required to handle different types of cargoes and to ensure that the storage areas do not get cluttered with voluminous cargo which will adversely affect the space for other cargo.
2		Steel coils come in rolls and is a raw material whereas an automobile car or bus are a finished product.	The proposed increase in demurrage on vehicles is not based on the product or finished product but on the transit area occupied by the cargo. Demurrage is applied as deterrent for prolonged storage in port area and therefore, whether it is a finished product or raw/ intermediate product does not have bearing.
3		MbPT recovers wharfage on ad-voleram basis and demurrage charges have never been computed on the basis of actual space being occupied by the type of cargo handled in Mumbai Port.	It is true that wharfage on vehicles is recovered on ad-voleram basis and demurrage has hitherto been recovered on tonnage basis. The storage area in the port being a transit area it cannot be permitted to be occupied by the cargo for long time, creating paucity of space for the fresh cargoes. The Port as a custodian is required to serve the interest of the trade irrespective of the commodities it handles.
4		Majority of cargo handled by Mumbai Port such as coils, bales, cartons, wooden logs are stacked in tiers of 5-6 high. Going on the basis, the Port authorities do not compute demurrage on the actual land area occupied. If the argument submitted by MbPT is to be considered, then the demurrage on the	Contention of IMC is not acceptable as demurrage on steel coils, etc. is recovered even though some of the coils are stacked. On the contrary motor vehicles which can not be stacked one above another unlike the steel coils, occupy considerable ground space hence liable to be

		above-mentioned cargoes should be reduced either to 1/5 or 1/6 on the commodities when stacked in tiers of 5 and 6 high and occupy land area space.	charged more demurrage.
5		It was the decision of the MbPT Board to promote movement of vehicles through Mumbai Port and accordingly specific areas earmarked, wherein vehicles would be stored. Based on the Port decision to extend all assistance to the industry, the industry has reciprocated in ensuring that larger volumes of cargo handled in Mumbai Port.	It is true that the port has extended all possible facilities to promote the cargo traffic of vehicles. However, to handle larger volume of motor vehicles it is necessary that quick evacuation is ensured by the trade within the free days in which case no demurrage is payable.
6		In the year 2004-05, 32000 vehicles were handled. In the year 2005-06, there was more than 100% increase i.e. 66,000 vehicles. In the year 2006-07, the volume increased to 86000 vehicles. In the year 2007-08, i.e. upto 29.2.2008, 87,000 vehicles have been handled. Based on the above volumes, it would not be unjustifiable for the industry to seek a reduction, in Mumbai Port wharfage charges, as volume have increased and accordingly in all fairness, the port tariff should decrease. In light of the above submission, the industry humbly request the port authorities not to revise their existing charges as there is no bonafides on their part to allege, that the industry uses the port premises as a warehouse. The warehouses adjoining the Mumbai Port are available at much cheaper rates and on monthly basis as against the existing port tariffs. The storage of empty containers within the MbPT port premises is higher when compared to the same being stored in warehouse adjacent to the Port.	The general tendency of the importers is to keep the vehicles in the port premises for a longer period thereby causing shortage of storage area only to avoid storage elsewhere in Mumbai and pay huge amounts. Percentage of motor cars cleared from the port premises after LFD for the last three years is as under : 2005-06 - 72.41% 2006-07 - 75.05% 2007-08 - 69.74% It is not the case that all import vehicles attract demurrage as such clearance of the vehicles within the free period is encouraged by the port. It is true that the volume of vehicular cargo traffic is increasing. Nevertheless the Port can not afford to get the storage areas congested which results in low productivity and higher turn around time of the vessels in the Port. In case the warehouses adjoining the Port are available at cheaper rates, the trade is at liberty to clear the import vehicles within the free days and store them outside the port premises. Same as above.
		<u>Honda Siel Cars India Ltd.</u>	
1	(i)	No importer is inclined to park the imported vehicles at Port for long time, as they would like to liquidate the stocks expeditiously in the interest of the customers and the business.	No comments

	(ii)	In one instance, for a shipment having 60 nos. of cars, these were detained for 57 days because of some objection raised by customs special intelligence and investigation branch. Subsequently, customs have released the cars as all their objections were satisfactorily answered.	As regards, cargo detained by Customs, there is a provision in the SOR for applicability of concessional demurrage charges under Chapter III – General notes (a) and (b).
2		For exporting the vehicles, the free period is given for 30 days, while for imports it is only 6 days. For imports, it takes a lot of time and formalities for getting customs clearance such as –	The pre-shipment storage facility of 30 free days extended for export cargo at the designated area facilitates aggregation of cargo by the exporters. In case of export, 'shipment depends on the vessel connectivity, hence 30 free days are provided at the designated areas under pre-shipment storage facility.
	(i)	Transportation of all vehicles from the vessel to storage area and parking in such a fashion that each car can move/be picked up in minimum possible time.	Import vehicles are moved from vessel side directly to storage yard where clearance formalities can be done as for all other import cargo, for which 6 free days are permitted. This 6 days free period is already a promotional measure and period is counted after completion of discharging operation of vessel.
	(ii)	Many formalities need to be completed for customs clearance which take a lot of time, which goes up substantially, if there are queries/objections.	The importers can make their documents ready, well in advance. Hence six free days provided at present is quite justified.
	(iii)	Cars need to be evacuated from the port using car carriers. Because of limitations at the port, so as not to cause congestion and difficulty in traffic movement only limited nos. of carriers can be placed for evacuating the cars.	Delivery of cargo/vehicles can be effected in two shifts and on request in third shift also. Therefore this does not pose any problem.
3		MBPT have mentioned that Rs.120 per day parking charges are recovered in Municipal/City parking areas. In City parking areas, users have a choice of whether or not and which parking space to use, while in the case of import of cars, vehicles have to necessarily kept at the port for the required customs formalities. Also it is our understanding that "Port Charges", collected for shipments through sea ports are towards port related activities, including storage during customs clearance.	The contention of the importer is not acceptable as the port area is for the transit storage and can not be used as a parking space. The Port cannot afford to permit storage for indefinite period as it would affect performance and would result into low productivity and higher turn around time of the vessels in the port. Port dues are vessel related charges which are collected for operation and maintenance of navigational aids, fire float vessels, expenses on harbour patrol etc. and do not include storage during customs clearance.
4		We also urge you to look at other options, including reviewing the need and efficiency of various steps involved in clearance formalities and/or storing these vehicles in the extended dock area (Frere Basin etc.) instead of the operational dock area.	Necessary action will be taken in due course.

2. A joint hearing in this case was held on 26 November 2009 in the office of this Authority. The MBPT and the concerned users have made their submissions. The gist of the joint hearing held is as under:-

MBPT

- (1). The existing tariff structure is not a deterrent and does not encourage faster clearance of cars from the docks.
- (2). Export cars do not block our area as they are stored outside. But import cars stay inside Docks occupying valuable space.
- (3). We already have the system of shifting imported vehicles outside. But the Trade does not adhere to the discipline. Shifting is not a problem. But, providing security at outside Dock area is a major concern.

BCHAA

MBPT should allow more free time to encourage the trade to utilise the Port.

MANSA

- (1). Import vehicles need certification before clearance which takes time.
- (2). MBPT can give notice and move the cars to some other locations outside Docks. Port can levy shifting charges there for.

CSLA

Port should exercise its powers under Sections 61 & 62 of MPT Act, 1963 and dispose off the uncleared cargoes within the stipulated time limit

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