

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

G.No.337

New Delhi,

29 September 2015

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 of the reference received from Mangalore Refineries and Petrochemical Ltd. seeking clarification on Order No.TAMP/22/2012-NMPT dated 1 April 2013 passed by this Authority as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/22/2012 - NMPT

Mangalore Refinery and Petrochemicals Ltd. ...

Applicant

QUORUM:

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri C.B. Singh, Member (Economic)

O R D E R

(Passed on this 4th day of September 2015)

This Authority passed an Order No.TAMP/22/2012-NMPT dated 1 April 2013 determining wharfage rate for Jetty Nos.10 and 11 for the years 2002-03 to 2008-09. The said Order was notified in the Gazette on 18 April 2013 vide Gazette No. 112. In the concluding Para 11.2 of the said Order, this Authority advised New Mangalore Port Trust (NMPT) and Mangalore Refineries and Petrochemical Ltd. (MRPL) to initiate action for finalizing the wharfage rate beyond the year 2008-09. Para 11.2 of the said Order is reproduced below:

“11.2. The NMPT and MRPL are advised to sit together and finalise the wharfage rate for the period from 2009-10 onwards and submit a proposal to this Authority within 3 months’ time from the date of notification of the Order in the Gazette.”

2.1. With reference to the paragraph 11.2 of the said Order, the MRPL vide its letter dated 23 April 2013 has made a reference to this Authority to clarify whether the concluding para 11.2 of the Order applies to computation of wharfage for the balance period for both the Berths i.e. Berth No.10 and Berth No.11 ending upto 2014-15.

2.2. The MRPL has requested this Authority to issue clarification to MRPL regarding period of applicability to the Memorandum of Undertaking (MOU) method of computation of wharfage for Berth No.10 and Berth No.11 at NMPT.

3.1. A copy of the representation dated 23 April 2013 received from the MRPL was forwarded to NMPT vide our letter dated 8 May 2013 with a copy endorsed to MRPL requesting the port to furnish its views/ comments on the points made by the MRPL in the said letter followed by reminders dated 24 May 2013 and 12 June 2013.

3.2. In this connection, the NMPT vide its letter dated 10 June 2013 has furnished its remarks on the representation made by the MRPL, which are summarized below:

- (i). The Memorandum of Understanding (MOU) for Jetty No.10 has expired on 15 October 2009 and for Jetty No.11 on 31 March 2011 on repayment of loan to the lending institutions and also to MRPL. This issue has been dealt with by the Authority in its Order dated 1 April 2013 vide para 10(v) while fixing the final wharfage for Jetty No.10 and Jetty No.11 for the years 2002-03 to 2008-09.
- (ii). Apart from that, the dispute relating to fixation of wharfage after the expiry of MOU for Jetty No.10 and Jetty No.11 was also resolved by the Port Trust Board vide Board Resolution No.159 dated 15 October 2012 and the decision of the Board was sent to Ministry on 23 October 2012 for passing final orders as per the terms of the MOU. Orders of the Government is awaited. Since the issue relating to closure of MOU was already dealt in the TAMP Order dated 1 April 2013, no further remarks are offered.
- (iii). Calculation of wharfage after the expiry of MOU period does not arise as only normal wharfage is applicable after the MOU period.

4.1. A joint hearing in this case was held on 21 June 2013 at the NMPT premises. The NMPT made a power point presentation on the matter referred by MRPL. The MRPL also made a power point presentation of its reference. At the joint hearing, the NMPT and the MRPL have made the following submissions:

New Mangalore Port Trust

- (i). TAMP has passed the Order in its wisdom after hearing NMPT and MRPL. Let us honour the TAMP Order.
- (ii). We are charging MRPL on SOR rate for the post MOU period. Computation of rates as per MOU formula after 16.10.2009 for Jetty No.10 and from 1.4.2011 for Jetty No.11 is not correct. Only normal wharfage is applicable after the MOU period.
- (iii). Our proposal for general revision of SOR took into account the rate of ₹70 per MT for Jetty No.10 &11 after the expiry of MOU period. TAMP has considered the rate of ₹70/- in income projection and reduced the tariff of POL from ₹70/- to ₹51.80 in the Order of February 2012. TAMP has also by considering the income projections reduced the tariff for other commodities by 26%. Our income has gone down by ₹55 crores to ₹60 crores. MRPL is not paying at ₹70 from 16 October 2009 onwards for Jetty No.10 and from 1 April 2011 onward for Jetty No.11.
- (iv). We are considering the rate of ₹51.80 for both the Jetties as per TAMP order of February 2012 from April 2012. MRPL is also not paying the rate of ₹51.80 from 1 April 2012 onwards for both the jetties. They are paying only the adhoc rate of ₹33 per MT even after the expiry of MOU period.
- (v). Ministry advised NMPT in August 2012 to discuss the issue with MRPL for mutual agreement. We had two meetings with MRPL in October 2012. MRPL demanded fixation of tariff as per MOU formula.
- (vi). Our Board has decided to charge ₹51.80 for both the jetties from April 2012 as it is notified by TAMP.
- (vii). There is no dispute on Jetty No.10. Dispute is only for Jetty No.11. MRPL being important customer, our Board has resolved to charge ₹51.80 from April 2011 to March 2012 also for Jetty No.11 as against ₹70. We have given a relief of ₹16.47 crores. We have sent the decision of Board to Ministry. We are awaiting the orders of Ministry. Decision of the Ministry will be binding on both NMPT and MRPL.
- (viii). The meaning of words “2009 onwards” in TAMP order in para 11.2 refers to computation of wharfage for the remaining period of MOU from April 2009 to 15 October 2009 for Jetty No.10 and from April 2009 to March 2011 for Jetty No.11.
- (ix). TAMP heard MRPL on the issue of preclosure of loan in the proceedings of April 2013 order and decided that no adjustment in tariff proposed by NMPT for Jetty No.11 is necessary with reference to preclosure of loans. No need to review the issues already settled by TAMP. There is no need to review TAMP Order dated 1 April 2013.

Mangalore Refinery and Petrochemical Ltd.:

- (i). MRPL made a brief power point presentation on its reference made to TAMP. Hard copy of the presentation was given.
- (ii). Design capacity of both the berths is only 15 Million Tonnes per annum. We are operating beyond 15 Million. We never get 14 meters draught throughout the

year. Handling beyond capacity and draught constraint necessitate payment of demurrages.

- (iii). During MOU period, MRPL paid wharfage in the range of ₹30 to ₹42 per tonne. NMPT is following a separate methodology for KIOCL right from 1992 despite traffic volume being lower than MRPL. NMPT asks ₹70 / ₹51.80 per tonne for post MOU period. Wharfage cannot be double after the MOU period. When traffic is on the higher side, how wharfage can increase under cost based method?
- (iv). MRPL contributes nearly 60% of the traffic of NMPT and no special treatment for us unlike others.
- (v). KIOCL rate / methodology should be applied to MRPL for calculation of wharfage.

(Chairman, NMPT: KIOCL is asking us for the past three or four years to apply wharfage prescribed in port's SOR).

- (vi). NMPT has furnished wharfage calculation based on MOU methodology only for the years 2009-10 and 2010-11 for jetty No. 11 as NMPT has unilaterally treated the MOU as closed with effect from March 2011. NMPT is not justified in pre closing the MOU period.
- (vii). When MRPL entered, port tariff was not cost based. The downward revision in 2004 at ₹70/- was also not cost based. Though the revision of rate was due in 2007, revision was done only in April 2012. 50% of surplus was only set off and the credit for set off the surplus was considered only for 3 years as tariff cycle is only 3 years. Therefore, even the rate of ₹51.80 is higher when compared to cost of operating the berths.
- (viii). On the direction of Ministry, NMPT held two meetings with us. NMPT stood by its stand to charge the notified rate with a marginal relief for jetty 11 for 2011-12 to charge ₹51.80 as against ₹70/-. It is not acceptable to MRPL. We told NMPT either to follow MOU methodology for post MOU period or adopt method followed for KIOCL based on cost plus approach.
- (ix). We request TAMP to direct NMPT to arrive at a mutually agreed rate by following MOU method for periods post MOU also. Only operating cost and reasonable returns should be considered. General tariff fixation has certain element of cross subsidization.

4.2. At the joint hearing, both NMPT and MRPL reported that they had two meetings in October 2012 in pursuance of an advice rendered by the Ministry of Shipping (MoS) to NMPT in August 2012 to discuss the issues with MRPL to arrive at the mutually agreeable rate. Consequent to the advice rendered by Ministry and the two meetings the NMPT had with the MRPL, the NMPT Board has taken a decision in October 2012 to charge ₹70/- per tonne from 16 October 2009 to 31 March 2012 for Jetty No.10 as there is no dispute on Jetty No.10, according to NMPT. As far as Jetty No.11 is concerned, the Board has decided to charge ₹51.80 per tonne from 1 April 2011 to 31 March 2012 as against ₹70/- per tonne, considering MRPL being an important customer. The rate of ₹51.80 per tonne will be charged from 01 April 2012 onwards for both the Jetties as decided by the NMPT. The decision of NMPT are not acceptable to MRPL. The NMPT has reportedly conveyed its decision to the MOS on 23 October 2012 and it was awaiting the Orders of MOS.

4.3. Since the NMPT had at the joint hearing reported that it had conveyed its decision regarding levy of wharfage rate for Jetty Nos.10 and 11 for the post MOU period to the MOS, as decided at the joint hearing, the NMPT was requested vide our letter dated 28 June 2013 to convey the decision of the MOS when received. The NMPT, vide its letter dated 3 July 2013, agreed to inform this Authority as and when any order from the MOS is received.

5. In the meantime, MOS convened a meeting of NMPT, MRPL, and TAMP on 26 February 2014 to discuss the issue of fixation of wharfage for Jetty no. 10 and 11 for the post MOU

period. As emerged in the meeting, the Ministry was to issue necessary clarification on the period when MOU concludes with respect to the jetties and also to clarify on the methodology applicable for arriving at the wharfage rate for the period beyond MOU.

6. In this backdrop, the MOS has issued an Order No. PR-14013/1/2010-PG dated 7 July 2015 to the NMPT and MRPL and endorsed a copy of the same order to this Authority. The MOS after examining the issues raised by MRPL in the Ministry in consultation with NMPT, MRPL and this Authority and after hearing the parties and scrutinizing the relevant documents such as MoUs of 1995 and 2000, the Rupee Loan Agreement, and the submissions made by MRPL, has passed the said Order. The gist of the Order of the MOS is given below:

- (i). Wharfage rate at ₹51.80/MT is considered reasonable for Jetty no.10 w.e.f. 15.10.2009 onwards.
- (ii). There is no ambiguity on the effective date of levy of normal wharfage charges for jetty no.11 for the post MOU period which is from 01.04 2011.
- (iii). The MOS has in the concluding para ordered that:

- (a). The rate of wharfage charges for jetty nos.10 and 11 at NMPT shall be fixed as under:

Sr. No.	Jetty No.	Effective date of levy of normal wharfage charges	Wharfage charges/ period
1.	10	15.10.2009	₹51.80 per MT from 15.10.2009 onwards
2.	11	01.04.2011	₹51.80 per MT from 01.04.2011 onwards

- (b). It has further clarified that for the subsequent period MRPL shall pay the tariff fixed by TAMP for their two captive berths.
- (c). The aforesaid decision of the Ministry of Shipping shall be binding on both NMPT and MRPL.

7.1. The matter before this Authority is limited to the reference made by the MRPL seeking clarification on the concluding para 11.2 of the Order No.TAMP/22/2012-NMPT dated 1 April 2013. The MRPL has sought clarification about the applicability of the MOU method of computation of wharfage rate for Jetty Nos.10 and 11 beyond the MOU period for these two jetties.

7.2. The MOS Order No.PR-14013/1/2010-PG dated 7 July 2015 explicitly clarifies the reference made by the MRPL on para 11.2. of the Order dated 10 April 2013. The said Order is binding on both NMPT and MRPL. In view of that, this Authority based on collective application of mind disposes of the representation of the MRPL dated 23 April 2013 as closed.

(T.S. Balasubramanian)
Member (Finance)