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Tariff Authority for Major Ports

G.No.463

New Delhi,

17 December 2019

NOTIFICATION

In exercise of the powers conferred by Section 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from Kolkata Port Trust (KOPT) for realization of Penal Berth Hire Charges from vessels remaining inside Dock after completion of work for long period, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports

Case No. TAMP/45/2019-KOPT

Kolkata Port Trust

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QUORUM

Applicant

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. Rajat Sachar, Member (Economic)

ORDER

(Passed on this 29th day of November 2019)

This case relates to the proposal received from Kolkata Port Trust (KOPT) for levy of Penal Berth Hire Charges from vessels remaining inside Dock after completion of work for long period.

2.1. The submissions made by KOPT vide its letter no. GM(T)/38/Pt.II/834 dated 27 August 2019 are as follows:

- (i). Haldia Dock Complex (HDC) is a tidal Port. All sailing vessels in the impounded Dock System cannot sail out at a time as the lock window during tide is for a limited period. Therefore, at all times around 5 to 6 vessels remain waiting at various berths as well as alongside vessels for their turn to sail out.
- (ii). As a result, there is congestion inside the Dock. For accommodating the incoming vessels, these vessels are required to be shifted from one berth to another vacant berth. Therefore, a lot of shifting of vessels inside the impounded Dock System is required to be done.
- (iii). The situation worsens when vessels get detained inside the Dock for a considerable period for various reasons which are not attributable to the Port, such as disputes between the Owners, Charters, Receivers, Court cases, Customs related issue etc.
- (iv). As there is no berth earmarked for holding detained vessels inside Dock, often these vessels are forced to be kept at a working Berth or in double/ triple banking position. This leads to obstructing other vessels which are scheduled to sail out from the Dock.
- (v). In order to free the sailing vessels, port has to shift the long waiting vessels to other berth. This shifting of vessels from one Berth to another requires involvement of Tugs and Dock Pilot Services of the port which consumes precious time and affects the placement of inward vessels as well as shifting of waiting vessels inside Dock.
- (vi). Due to such unnecessary intra Dock movement of the vessels, port's resources are getting wasted and revenue is also compromised.
- (vii). In the existing Scale of Rates (SOR), u/s S. 21, there is a provision for charging Berth Hire at single rate irrespective of the days of stayal of the vessel in the Dock at 0.398 cents subject a minimum of \$ 9.552 per hour per GRT for vessels engaged in Foreign Trade and for vessels engaged in Coastal Trade, the Berth Hire Charges is ₹. 143.45 per hour per GRT. Again rebate is allowed in Berth Hire Charges if the vessels idle due to reasons attributable to the KOPT.
- (viii). Therefore, in order to discourage long stayal of vessel inside the Dock due to reasons not attributable to Port, the KOPT has decided to levy penal Berth Hire as approved by Board of Trustees of KOPT, which is as follows:

Sr. no.	Period of stayal of vessels	Charges proposed
1	Up to 72 hrs. from the time of completion of the vessels work	Normal berth hire charges as per existing SOR

2.	Beyond 72 hrs. till 1 week from the time of completion of vessels work	2 times the normal berth hire charges as per existing SOR.
3.	Beyond 1 week till 1 month from the time of completion of vessels work	3 times the normal berth hire charges as per existing SOR.
4.	Beyond 1 month till 3 months from the time of completion of vessels work	4 times the normal berth hire charges as per existing SOR.
5.	Beyond 3 months till 6 months from the time of completion of vessels work	5 times the normal berth hire charges as per existing SOR.
6.	Beyond 6 months from the time of completion of vessels work	10 times the normal berth hire charges as per existing SOR.

2.2. The proposal has the approval of the Board of KOPT vide Board Resolution no. R/419/HDC/Sh&CH/3/07/2019 dated 18 July 2019.

3. The proposal for levy of penal Berth Hire Charges on vessels inside the Dock after completion of work for long period relates to Haldia Dock Complex (HDC) of KOPT as conveyed by KOPT vide its e-mail dated 21 November 2019.

4. In accordance with consultative procedure prescribed, a copy of the KOPT proposal dated 27 August 2019 was forwarded to the concerned users/ user organizations, vide letter dated 3 September 2019, seeking their comments. Only one of the user organizations i.e Association of Shipping Interests in Calcutta (ASIC) has submitted its comments. The said comments was forwarded to KOPT as feedback information. The KOPT has not specifically responded till the case was taken up for finalization. Nevertheless, the comments received from ASIC were reiterated by the ASIC during the joint hearing held on the case in reference, where the KOPT has furnished its comments, which has been brought out separately in the excerpt of the comments received and arguments made by the concerned parties during the joint hearing.

5. A joint hearing in this case was held on 17 October 2019 at the KOPT premises. At the joint hearing, the KOPT made a brief power point presentation of its proposal. The KOPT and the concerned users/ user organizations have made their submissions at the joint hearing.

6. 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>

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

- (i). In the Kolkata Port Trust (KOPT), the sailing vessels have to wait for favourable tidal conditions to sail out. Since the vessels keep waiting at various berths as well as alongside vessels for their turn to sail out, there is reported to be congestion inside the impounded Dock. In addition to the above, there are some instances of vessels getting detained inside the Dock for a considerable period of time for various reasons which are not attributable to the Port, such as disputes between the Owners, Charters, Receivers, Court cases, Customs related issue etc., and since there is no berth earmarked for holding detained vessels inside Dock, often these vessels are kept at a working Berth or in double/ triple banking position, thereby obstructing other vessels which are scheduled to sail out from the Dock. Thus, to enable smooth sail of the vessels, the port has to shift the long waiting vessels to other berths with the help of Tugs and Pilots. Since the port's resources are wasted and revenue is also compromised as reported by the port, and in order to discourage long stayal of vessel inside the Dock due to reasons not attributable to Port, the KOPT has come up with a proposal for levy penal Berth Hire on vessels remaining inside Dock after completion of work for long period. The proposal of the port has approval of the Board of Trustees of KOPT.

- (ii). The submissions made by KOPT in its proposal dated 27 August 2019 alongwith the information/ clarification furnished by KOPT during the processing of the case in reference, are considered in this analysis.
- (iii). As per the proposal of the port, for the period upto 72 hours from the time of completion of the vessel's work, normal berth hire charges are proposed to be levied. Only in the instances, where the vessel continues to stay beyond 72 hours, the KOPT has devised a slab wise structure for levy of penal berth hire charges. The slab structure is prescribed in such a manner that more the time the vessel remains in the berth after completion of the work, the more would be its penal charges. As the period of stay of the vessels increases, justifiably the penal levy also increases.
- (iv). Wastage of port resources is a national loss and in that perspective, the proposal of the port to levy penal berth hire charges in an ascending graded manner on vessels remaining inside the Dock after completion of work for long period, is in the right direction. As rightly brought out by KOPT, the intention of the port is not to generate revenue on account of the penal levy but only to give an extra push to the trade, so that they take additional timely action to ensure timely sail of the vessel.
- (v). Since the proposal has emanated to discourage long stayal of vessel inside the Dock for reasons not attributable to Port, the users are of the view that the port should identify a place in port waters to keep such long staying vessels, so that it neither hinders the port operations nor does it put a financial burden on the users by way of payment of penal berth hire charges. Since the approach Channel of the port is narrow, it has not been possible for the port to identify any alternative space for keeping such vessels. Thus, considering that over stayl of vessels is hampering the port productivity and is resulting in wastage of port resources, the port has appealed to the users to support the proposal of the port wholeheartedly.
- (vi). Considering the submissions made by the KOPT and expecting that levy of penal berth hire charges by the KOPT would result in reduction in the instances of vessel staying for long hours after completion of work, for reasons not attributable to the port, thereby resulting in more efficient utilization of port resources and improvement in the port productivity, this Authority is inclined to approve the penal berth hire charges as proposed by the port.
- (vii). Since the proposed levy is penal in nature and is expected to be levied on about only 1% of the total vessels visiting the port, the port is not seen to have estimated any revenue anticipated to be realized from the proposed levy.
- (viii). Orders of this Authority generally come into effect prospectively after expiry of 30 days from the date of Gazette Notification unless otherwise different arrangement is specifically mentioned in the respective tariff Orders. In the case in reference, alongwith the submission of the proposal, the port is seen to have simultaneously issued a Trade Circular dated 27 August 2019 prescribing levy of penal berth hire charges with immediate effect. In this regard, it is relevant here to mention that Clauses 7.6.2 to 7.6.4 of the Tariff Policy, 2018, provide that whenever a specific tariff for services/ cargo is not available in the notified Scale of Rates, the port can submit the proposal and levy the rate on an adhoc basis till the rate is finally notified. In the instant case, the penal berth hire charges are not prescribed in the port SOR. As stated above, the KOPT has already started levying the rate with effect from 27 August 2019. Based on this position, this Authority is inclined to approve the proposed levy of the penal berth hire charges retrospectively from the date of implementation of the rates by KOPT i.e. 27 August 2019.

8.1. In the result, and for the reasons given above, and based on collective application of mind, this Authority approves the following new note no. vi) under Section 21.1 of Part VI – Vessel

related charges for vessel engaged in Foreign Trade & Vessel engaged in Coastal Trade in the existing Scale of Rates of KOPT:

- “(vi). Penal Berth Hire Charges at HDC, if the Vessel idles inside Dock after completion of cargo work due to reasons not attributable to KOPT:

Sr. no.	Period of stayal of vessels	Charges proposed
1	Up to 72 hrs. from the time of completion of the vessels work	Normal berth hire charges as per existing SOR
2.	Beyond 72 hrs. till 1 week from the time of completion of vessels work	2 times the normal berth hire charges as per existing SOR.
3.	Beyond 1 week till 1 month from the time of completion of vessels work	3 times the normal berth hire charges as per existing SOR.
4.	Beyond 1 month till 3 months from the time of completion of vessels work	4 times the normal berth hire charges as per existing SOR.
5.	Beyond 3 months till 6 months from the time of completion of vessels work	5 times the normal berth hire charges as per existing SOR.
6.	Beyond 6 months from the time of completion of vessels work	10 times the normal berth hire charges as per existing SOR.

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8.2 The KOPT is directed to incorporate the said note in its Scale of Rates.

8.3. The said note is deemed to have come into effect from 27 August 2019 and its validity shall remain co-terminus to the validity of the revised Scale of Rates to be notified by this Authority, disposing of the general revision proposal filed by KOPT.

(T.S. Balasubramanian)
Member (Finance)

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/45/2019-KOPT	Proposal received from Kolkata Port Trust for realization of Penal Berth Hire Charges from vessels remaining inside Dock after completion of work for long period.
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A summary of comments received from Association of Shipping Interests in Calcutta (ASIC) vide its letter dated 11.09.2019, which was forwarded to KOPT for its comment as given below. The KOPT has not furnished its comments on the comments of ASIC.

Comments of Association of Shipping Interests in Calcutta (ASIC)
In International Trade, during vessel call, there can always be incidents of mechanical problem on vessels / cargo disputes, besides arrest as per order from the Hon'ble High Court at Kolkata. Such incident, as above, cause prolonged delays, especially in case of arrest of ship, where all concerned have to follow the diktat of the Court. In view of the same, ASIC and its members and Trade at large request that a layup berth be identified / designated at Haldia. In the circumstances, the Circular dated 27 August 2019 issued by HDC of KOPT regarding implementation of penal berth hire charges on vessels remaining inside Dock for reason not attributable to the port, with immediate effect, is arbitrary in nature and not keeping in practice with the normal trade patterns, besides being detrimental to the Trade. Therefore, the said Circular to be withdrawn with immediate effect.

2. A joint hearing in this case was held on 17 October 2019 at the KOPT premises. At the joint hearing, the KOPT made a brief power point presentation of its proposal. The KOPT and the concerned users/ user organizations have made the following submissions at the joint hearing:

HDC, KOPT

- (i). Some of the vessels stay inside the Dock for a long period owing to various disputes between parties, Court Order, Customs issues, non-clearance of port dues etc.
- (ii). As there is no berth earmarked for holding detained vessels inside Dock, often these vessels are forced to be kept at a working Berth or in double / triple banking position, thereby obstructing other vessels which are scheduled to sail out from the Dock. Such vessels need to be shifted from one berth to another to accommodate incoming vessels.
- (iii). Frequent shifting of the vessels, leads to wastage of port's resources, reduces port efficiency, affecting the placement of the vessels etc. The berth throughput is also impacted as the berth is being occupied by an idling vessel. For example, one vessel was in the port for almost a year and 4 months from 29 July 2014 to 26 November 2015. During the stay, the said vessel was shifted 97 times. Another vessel continues to be in the port for

almost a year and 11 months from 23 November 2017. Till date, the vessel has been shifted 99 times.

- (iv). Such instances has impacted the productivity of the berths considerably.
- (v). In order to discourage long stayal of vessel inside the Dock due to reasons not attributable to Port, the KOPT has decided to levy penal Berth Hire charges. The Board of Trustees of KOPT have approved the proposal. TAMP is requested to accord approval for levy of penal berth hire charges, as proposed by the port.
- (vi). We have explored regarding alternative space. But it is seen that such an option is not possible. Approach Channel is very narrow. We propose this penal levy, as it is hampering our productivity.
- (vii). The intention of the port is not to generate revenue from the proposed penal charges. The levy of penal charges is proposed so as to give an extra push to the trade, so that they take additional action/ steps to ensure early sail of the vessel. Penalty will not compensate loss suffered by the port.
- (viii). From the port statistics, it can be said that out of the 2500 vessels visiting the port in a year, only about 25 vessels will fall in the category of levy of penal charges. That is only 1% vessels will be governed by the proposed penal levy. Thus, the majority of the users will not be impacted.
- (ix). Due to frequent shifting, there is wastage of port resources, for no fault of the port.
- (x). Infact, the Trade should wholeheartedly support the proposal, so that the port resources are effectively utilized.

SCI

- (i). No vessel owner would want his vessel to remain in the port. However, due to some inevitable reasons, there may be some occasions when the vessel is required to be kept in the port. These matters are not in our control.
- (ii). To add to our misery, if the port starts levying penal charges, it will put a huge burden on us. The trade will suffer.
- (iii). When normal berth hire charges cannot be collected from such vessels, how will the penal berth hire charges be collected?
- (iv). We request the port to identify a place in the port waters, where such long staying vessels can be kept, so that it neither hinders the port operations nor it affects our pockets.

Samsara Group

- (i). The port should take steps to understand the circumstances as to why such situations arise and try to sort out the issues. Levy of penal charges, when the vessel is not at fault, is not correct.
- (ii). It is requested that an area be earmarked for such vessels. This will be win win situation for all.

ASIC

- (i). In International Trade, during vessel call, there can always be incidents of vessels/ cargo disputes, besides arrest as per Court order. In view of the same, it is requested that a layup berth be identified / designated at Haldia, so as to cater to such vessels.
- (ii). Normal berth hire charge is leviable upto 3 days after completion of vessel working. Give 3 working days or 7 days.

[Dy. Chairman, KDS: 3 days is reasonable]
