

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

G. No. 296

New Delhi,

20 October 2014

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 proposal received from the Kolkata Port Trust for fixation of rate for Customs inspection (both on wheel or otherwise) at Container Terminal of Kolkata Dock system under Kolkata Port Trust, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports

Case No. TAMP/31/2014-KOPT

Kolkata Port Trust

- - - - -

Applicant

QUORUM:

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

O R D E R

(Passed on this 30th day of September 2014)

This case relates to the proposal dated 6 June 2014 received from Kolkata Port Trust (KOPT) for fixation of rate for Customs inspection (both on wheel or otherwise) at Container Terminal of Kolkata Dock system under Kolkata Port Trust.

2.1. The main points made by KOPT in its proposal dated 6 June 2014 are summarized below:

- (i). The KOPT is developing a segregated Customs Inspection Area to facilitate Customs inspection/ examination of export FCL container within the Container Terminal at Kolkata Dock System (KDS).
- (ii). In the absence of the said facility at the Terminal, the users have to take their export FCL container (except those coming under Central Excise Seal) outside CFS for Customs inspection / examination before moving to Container Terminal for shipment.
- (iii). By virtue of the proposed facility, it is expected that crowding of trucks all over the Terminal with Export FCL container awaiting customs inspection would ease out, thereby contributing to improvement of all-round productivity, the benefit of which would be reaped by the users.
- (iv). No rate for Customs inspection in the Terminal is available in KOPT's Scale of Rates. As assessment and segregation of cost only for this particular activity is difficult, the Cost plus approach as stipulated in the Tariff Guidelines of 2005 could not be adhered.
- (v). Therefore, it is proposed to levy ₹ 500/- per container on the users for customs inspection at the proposed segregated Customs inspection area within the Terminal, based on TAMP's notified rates for similar type of service at various Container Terminals in other Major Ports.
- (vi). The notified rate for Customs Inspection within the Terminal varies from port to port. Considering that India Gateway Terminal – Cochin, a recently developed Terminal has a rate of ₹ 600/- per container and that TAMP has recently approved ₹ 440/- per container as Reference Tariff for Diamond Harbour Container Terminal Project (DHCTP) for Customs Inspection within the Terminal in the case of KOPT, the rate of ₹ 500/- per container is proposed as charge for Customs inspection within the Terminal.
- (vii). The KOPT Board of Trustees in its Meeting held on 9 May 2014 has approved the proposal for levy of ₹ 500/- per container for customs inspection at the segregated customs inspection area inside the Terminal subject to approval of the Authority. [The KOPT has attached a copy of Board resolution.]

- (viii) Accordingly, the following provision in the existing Scale of Rates at Clause S.14.1 as Sl. No.13: may be incorporated.

Sl. No.	Services	Rate in ₹ Per TEU
13	Customs Inspection within the Container Terminal	₹ 500/- per container

- (ix). Further, the special rate of 5% approved by the Authority will also be levied on the proposed rate.
- (x). It is intended to introduce the service and consequently implement the charge immediately on an adhoc basis till the rate is finally notified.
- (xi). In addition to the proposed charge for customs inspection, if any specific service at the customs inspection area is provided which involves port labour and/ or equipment, the charges as per the Scale of Rates of KOPT would be levied.
- (xii). It is expected to generate revenue of ₹ 2.90 crores per annum. During general revision of Scale of Rates of KOPT effective from 01.04.2014, the maximum permissible return on Capital Employed of 16% could not be factored fully. Thus, the estimated additional revenue will not push the ROCE beyond the maximum limit.
- (xiii) In this connection, the KOPT has consulted Association of Shipping Interest in Calcutta (ASIC), Calcutta Customs House Agent's Association (CCHAA) and some individual users and all of them have agreed to the levy of proposed rate of ₹500/- per container for Customs Inspection at the segregated Customs Inspection Area at Container Terminal at KDS.
3. In accordance with the consultative procedure prescribed, a copy of the KOPT proposal was forwarded to the concerned users/ user organizations for their comments. Some of users have furnished their comments, which were forwarded to the KOPT as feedback information. After a reminder, the KOPT vide its letter dated 20 August 2014 has responded on the comments of the users.
4. On a preliminary scrutiny of the proposal and while acknowledging the proposal, the KOPT was requested vide our letter dated 26 June 2014 to furnish additional information / clarification. The KOPT has responded vide its letter dated 19 August 2014 and 26 August 2014. The queries raised by us and response of KOPT thereon are tabulated below:

Sl.No.	Queries raised by us	Reply of KOPT
(i).	In para 10 of its letter, the rate for custom inspection within the Container Terminal is proposed as ₹500/- per container whereas in the heading of the table the description is given as Rate in ₹ Per TEU. The KOPT to clarify the correct unit of levy. It is noteworthy that in the list furnished by the KOPT reflecting the rate for customs inspection prevailing in Various Container Terminals, the rates are prescribed on Per Container basis.	The rate of ₹500/- proposed before the Authority is a per container rate. In this connection, the relevant Board resolution No. R/21/KDS/TFC/3/05/2014 dated 9 May 2014 attached with the proposed may kindly be referred. Regarding the heading of the table showing "Rate in ₹ per TEU", it is clarified that the clause of KOPT's Scale of Rates (i.e. S.14.1), under which the aforesaid new rate is proposed to be incorporated as Sl.No. 13 is having the table head with the said description. As such, while submitting the proposal the same description of the heading has been reproduced/ maintained, with specific mention against the proposed new rate '₹ 500/- per container'. Further, at para 10 of KOPT letter no. Fin/158/B dated 6 June 2014, in the rate column of the table after "₹500/- per

		container”, a note was erroneously typed within a bracket mentioning “Please check whether it is per container or TEU, the heading says it is per TEU”, which may kindly be ignored while processing the proposal. The inconvenience cause is regretted.
(ii).	In the proceedings of the Board Meeting forming part of the proposal, the revenue estimated to be generated through the proposed levy is quantified at ₹2.9 crores per annum. This is seen to be based on the position that 58249 containers would avail this facility. The said 58249 containers is reported to be based on a container traffic of 5.2 Lakhs TEU's for the year 2014-15. In this connection, it is relevant to mention that in the general revision proposal of KOPT, which was recently disposed by the Authority, the container traffic for the year 2014-15 was considered a 6.71 lakh TEUs. The KOPT to, therefore, explain the reason for considering a lower container traffic for projection of additional income. The KOPT to calculate the additional income based on the traffic of 6.71 lakh TEUs.	The computation of ₹2.9 crores had been made with respect to KDS container handling only and not with respect to HDC containers. The said charges will be realized at KDS and not at HDC and accordingly, no such computation of additional income is required for 6.71 lakhs TEUs of KOPT.
(iii).	At the time of disposal of the General Revision proposal of KOPT in May 2014, the additional income estimated to be earned by KOPT from the proposed rates had not been anticipated and as such the same has not been factored while deciding the general revision proposal of KOPT. The KOPT to, therefore, propose suitable adjustments in its existing Scale of Rates approved in May 2014, so as to ensure a revenue neutral position at KOPT.	It may be noted that the total deficit of KOPT in terms of percentage before rate increase was 13.46% and Cargo was -32.76% in 2014-15. Even after moderation by increase in rates as per TAMP, there would a deficit of -1.69% for KOPT as a whole and -20.62% for Cargo handling activity. Accordingly, KOPT feels that no adjustment is required due to aforesaid additional income of ₹2.9 crores.

5. A joint hearing in this case in reference was held on 22 August 2014 at the KOPT premises in Kolkata. At the joint hearing, the KOPT has made submissions.

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 totality of the information collected during the processing of the case, the following position emerges:

- (i). The KOPT is in the process of developing a segregated Customs Inspection Area to facilitate Customs inspection/ examination of export FCL container within the Container Terminal at Kolkata Dock System (KDS). Accordingly, the proposal from the port is to enable it levy a rate of ₹ 500/- per container for rendering the service of Customs Inspection within the Container Terminal, when the Customs Inspection Area becomes operational in near future. Further, the special rate of 5% approved by this Authority while disposing of the proposal of KOPT for general revision of its Scale of Rates recently, to bridge the gap in Pension Fund, is also proposed to be levied.

- (ii). The objections of NACFS to the proposal of KOPT does not appear to be with respect to the proposed rate but about its apprehension that the proposed charge may be levied by the KOPT on the containers stuffed at the non-customs area and brought inside the terminal for export. The proposal of the KOPT does not compel that such containers stuffed at the non-customs area should come to the designated area in KDS for on-wheel inspection by customs. Containers stuffed at non-customs area can move to off dock CFS for examination by customs before it is brought to the KDS for shipment as clarified by KOPT; and, the proposal of the KOPT does not propose to levy the rate of ₹500/- on such containers.
- (iii). Clause 2.11.1 of 2005 tariff guidelines stipulates that tariff/ charges leviable shall be commensurate with the services rendered/ facilities provided. The KOPT envisages to provide the facility for inspection. However, the KOPT has expressed difficulty to assess and segregate the cost pertaining to the provision of facility for service of Customs inspection alone.
- (iv). The tariff for Customs Inspection prescribed in the Scale of Rates of BOT Container terminals operating at various Major Port Trusts ranges from about ₹ 400/- per container to ₹ 600/- per container. The tariff for Customs Inspection prescribed in the Reference Tariff Schedule of Container Terminal to be developed at Diamond Harbour at the KOPT on PPP mode, is around ₹ 440 per container.
- (v). The rate of ₹ 500/- per container proposed by the KOPT is seen to be within the range of rates of Customs Inspection prevailing at other Container terminals. It is however, more than the reference rate of ₹ 440/- per container as approved for the PPP project at KOPT. In fact the said reference rate would be slightly higher after the applicable escalation factor is applied. In this regard, it is relevant here to mention that in general, the tariff of KOPT takes into account the historical costs, legacy costs, impact of the wage revisions etc., which may not be the case with the new PPP operator. Therefore, it may not be appropriate to compare two rates, which are not at all comparable.

It is noteworthy that the users consulted by KOPT have given their consent for levy of rate of ₹ 500/- per container for Customs Inspection. That being so, this Authority is inclined to endorse the proposal of the KOPT for the rate of ₹500/- per container, recognizing the difficulty expressed by KOPT to assess the cost for this service alone.

- (vi). The KOPT, based on the container traffic estimated to be handled at the KDS during the years 2014-15 and 2015-16 and the proposed rate of ₹ 500/- per container has quantified the additional income to the tune of ₹ 2.90 crores per annum.

Since the additional income estimated to be earned by KOPT from the proposed rate had not been anticipated and factored while deciding the general revision proposal of KOPT, there may be an argument that some other rate should be adjusted to maintain revenue neutral position.

In this regard, it is relevant here to mention that the question of ensuring a revenue neutral position arises when a port has already been given tariff whatever is due to it, based on the estimated cost position and thereafter it is to be again granted a new tariff. However, in the case of KOPT, it is relevant to recall that in the proceedings relating to the KOPT general revision case disposed in February 2014, the port had sought Return on Capital employed to the tune of 12% only, as against the maximum permissible return of 16% on the ground that 16% ROCE would have required steeper increase in basic rates. Thus, based on the request made by the KOPT, Return to the tune of 12% only was allowed and accordingly increase was allowed at the then existing tariff, leaving some quantum of deficit uncovered. Therefore, the question of adjustment in some other rate now, to maintain revenue neutral position does not arise.

- (vii). With regard to the proposal of the port to levy the 5% special levy on the charges of customs examination, again there is a scope of argument that levy of 5% special levy on the charges of customs examination by the KOPT, which had not been anticipated during the disposal of the general revision proposal of KOPT, will lead to port recovering an amount of ₹ 0.29 crores (₹ 2.9 crores per annum additional income x 2 years x 5%), more than the amount determined towards the pension liability. In this connection, it is relevant to recall that as mentioned in the general revision Order, the pension levy had worked out to about 5.34%. However, for the present, the KOPT has been authorized to charge a special rate of 5% in the current tariff cycle and the position was to be reviewed at the time of the next revision of its Scale of Rates. Thus, the pension liability to the tune of about ₹0.42 crores (Pension liability of ₹124.87 crores x 0.34%) has been left uncovered. Thus, the question of port earning any undue benefit out of levy of 5% special levy of the Customs Examination charges does not arise.

8.1. In the result, and for the reasons given above and based on collective application of mind, this Authority approves the proposal of KOPT and directs the KOPT to insert the following provision as Sl. no. 13. under Section 14.1 (Charges for Miscellaneous Services rendered to container/container vessel) under Part – II – Charges on Container and Containerized Cargo, in the existing Scale of Rates of KOPT:

“

Sl. No.	Services	Rate in ₹
13.	Customs Inspection within the Container Terminal	₹ 500/- per container

“

8.2. The KOPT has proposed to levy the rate upon completion of the work of development of segregated custom inspection area. It has also obtained the consent of the users to the levy. Therefore, the rate approved will be made effective from the date of commencement of the Customs Inspection Facility at the Container Terminal of Kolkata Dock System or from the date of notification of the order passed in this case in the gazette of India, whichever is earlier.

(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/31/2014-KOPT	-	Proposal received from Kolkata Port Trust (KOPT) for fixation of rate for Customs inspection (both on wheel or otherwise) at Container Terminal of Kolkata Dock system under Kolkata Port Trust.
--------------------------------	---	---

A summary of the comments received from the users and reply of Kolkata Port Trust (KOPT) thereon are summarized in the following table:

Sl. No.	Comments of users	Reply of KOPT
1.	National Association of Container Freight Stations	
(i).	NACFS was not consulted at any point of time regarding scope of work of fixation of rates for custom inspection at Kolkata Dock System. We welcome the decision of allowing factory stuffed Central Excise sealed export containers, duly stuffed and brought to port from ICD or CFS. NACFS has no objection if the containers are stuffed inside the port at ₹500/- per container.	NACFS is the apex association of the CFS operators operating CFS outside docks. They have no relation to the service being provided at the docks and for fixation of tariff for that.
(ii).	However, NACFS strongly objects the cargo brought in by containers, duly stuffed at Private warehouses (Non-custom areas) and allowed for appraisalment inside the port on wheels. It is requested not to allow any additional expenses to be collected for on wheel appraisalment of such cargo as the said procedure is not practiced in any part of India.	The proposal facility in no way will restrict movement of containers from private warehouse to the off dock CFS's warehouse for subsequent movement to the port after customs examination. Port's facility will be beneficial for the exporters.
2.	Indian National Shipowners' Association	
	No comments.	----
3.	Bengal National Chamber of Commerce & Industry	
(i).	It is encouraging that Kolkata Port Trust in its endeavor to provide 100% customer satisfaction level services, is planning to create a zone just outside the dock complex where stuffed containers, which are not sealed by excise department can enter inside the said zone/terminal for necessary customs examination / inspection both on wheels or otherwise. This follows CBEC's guideline for excise rule. This segregated customs inspection area will eradicate the traffic congestion and help free flow of traffic within the dock.	It is observed that they have welcomed the idea of implementation of customs inspection zone.

	Hence it will facilitate export and its related trade by way of minimizing the involvement of time.	
(ii).	We highly appreciate the vision of the Chairman, Kolkata Port Trust towards future and welcome the idea for implementation of segregated customs inspection zone. The value so determined for such customs examination is also acceptable to us as the same is comparable to other docks.	

2. A joint hearing in this case in reference was held on 22 August 2014 at the KOPT premises in Kolkata. At the joint hearing, the KOPT has made the following submissions:

- (i). Under the current scenario, there is no dedicated area to facilitate Customs inspection / examination of export FCL container within the Container Terminal at Kolkata Dock System (KDS).
- (ii). This involves movement of Container outside CFS for Customs inspection/ examination and thereafter moving the Container to the Terminal for shipment. This leads to congestion in the port roads.
- (iii). Therefore, a need has been felt to have a dedicated segregated Customs Inspection Area to facilitate Customs inspection / examination of export FCL container within the Container Terminal at Kolkata Dock System (KDS).
- (iv). In this connection, we propose to levy a rate of ₹500/- per container, which is based on the rates prevailing at other container terminals for a similar service. Major trade bodies have accepted the proposed rate.
- (v). The work for development of a segregated Customs Inspection Area is under progress and the work in this connection is expected to complete in a couple of months. Thereafter, we propose to levy the rate.

- - - - -