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TARIFF AUTHORITY FOR MAJOR PORTS

G No. 194

New Delhi,

03 August 2010

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 from the Kolkata Port Trust to amend its Scale of Rates to accept payment of port charges from Container Freight Station (CFS) / Inland Container Depot (ICD) operators as in the Order appended hereto.

(Rani Jadhav)
Chairperson

Tariff Authority for Major Ports
Case No. TAMP/12/2008 - KOPT

Kolkata Port Trust

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Applicant

ORDER

(Passed on this 9th day of July 2010)

This case relates to a proposal received from Kolkata Port Trust (KOPT) for amendment of its Scale of Rates (SOR) to accept payment of port charges from Container Freight Station (CFS) / Inland Container Depot (ICD) operators.

2.1. Section 3(v) of the existing Scale of Rates of KOPT which specifies user groups for payment of port charges in relation to containers reads as follows:

"In case of FCL container, except the containers from / to ICDs / Customs Notified CFS, the charges related to container and the containerized cargo including the on-board (also for use of equipment if any), shore handling and storage charges thereon shall be levied on the owner of the cargo or his clearing and forwarding Agent / Handling Agent. However, port may recover such charges from Container Agents / Main Line Operators (MLO) if the Container Agents / MLO apply for destuffing of FCL Containers in absence of Importer / Exporter arranging delivery of the container.

In case of LCL container, empty container and container from / to ICDs / Customs Notified CFS, the charges related to container and the containerized cargo including the on-board (also for use of equipment if any), shore handling and storage charges thereon shall be levied on the Container Agents / MLOs.

However, after destuffing or prior to stuffing, the cargo related charges, if any, shall be levied on the owner of the cargo or his Clearing & Forwarding Agent / Handling Agent."

2.2. M/s. A.L. Logistics Private Limited (ALLPL) and Central Warehousing Corporation (CWC) had separately represented to this Authority stating that the Section 3(v) of the SOR does not provide any scope for CFS operators to pay charges on behalf of its customers. They had requested to consider the incorporation of the CFS's as lawful entities on whom the port charges can be levied for containers moving to / from CFS, by way of an appropriate amendment to the Section 3(v) of the KOPT Scale of Rates.

2.3. A copy each of the representation of ALLPL and CWC was forwarded to KOPT for its comments. After reminder, the KOPT vide its letter dated 13 February 2008 has made the following submissions:

- (i). The issues raised by ALLPL and CWC have been examined and their request for allowing payment of port charges as CFS operators has been considered favourably.
- (ii). The ALLPL and CWC have been allowed to open deposit account with KOPT to make payment of port charges as CFS operators.
- (iii). KOPT has decided that similar facilities should be given to ICD operators for smooth commercial operation.
- (iv). The Authority is requested to consider the matter and arrange for the amendment of para-2 of Section 3(v) of KOPT SOR as follows:

"In case of LCL container, empty container and container from / to ICDs / Customs notified CFS, the charges related to container and containerized cargo including the on-board (also for use of equipment, if any), shore handling and storage charges thereon shall be levied on the Container agents / Main Line Operators (MLOs). However, incase of container from / to ICDs / Customs notified CFS, the concerned CFS / ICD operator can also pay the port charges".

3. In accordance with the consultative procedure prescribed, the proposal filed by the KOPT was forwarded to M/s. ALLPL & CWC and circulated to the concerned users seeking their comments. The comments received from M/s. ALLPL & CWC and users were forwarded to KOPT as feedback information.

4. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received will be sent separately to the relevant parties. These details will also be made available at our website <http://tariffauthority.gov.in>

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

- (i). This Authority had passed an Order on 29 December 2006 approving the existing Scale of Rates of KOPT. The existing Scale of Rates of KOPT specifies the different user groups namely owner of the cargo or his Clearing & Forwarding Agent, Container Agent and Main Line Operators who are authorised to pay port charges for the services rendered by the KOPT in relation to handling of containers. Section 3(v) of the Scale of Rates of KOPT which governs this aspect, inter alia, restricts the user groups to Container Agents and Main Line Operators for payment of port charges in relation to the containers which arrive from Inland Container Depot (ICD) and Customs Notified Container Freight Stations (CFS) or the containers which are destined to ICD and CFS. The proposal of the KOPT is to enlarge this provision to cover CFS and ICD operators for payment of port charges.
- (ii). The users have unanimously endorsed the amendment proposed by the KOPT. That being so, there does not appear to be any need for setting up a joint hearing in this case. This Authority, therefore, decided to proceed to dispose of the proposal in reference filed by the KOPT.
- (iii). Considering that the proposal of the KOPT is only to enlarge the scope of the existing arrangement prescribed for levy of port charges and keeping in view that no user group has objected to the proposed amendment, the Authority is inclined to approve the proposed amendment.
- (iv). It is to be recognised that the ultimate importer / exporter has to bear the port cost in one form or other, irrespective of the intermediaries who may be paying the port in the first instance. The reimbursement to be claimed by such persons paying the port charges in the first instance cannot be more than the actual charges paid by them to the port. A disclosure of actual payment made to the port by such intermediaries to their clients will promote transparency.

5. In the result, and for the reasons given above and based on a collective application of mind, the existing second paragraph of sub-section (v) under Section 3 of the Scale of Rates of KOPT is replaced with the following paragraph:

“In case of LCL container, empty container and container from / to ICDs / Customs Notified CFS, the charges related to container and containerized cargo including the on-board (also for the use of equipment, if any) shore handling and storage charges thereon shall be levied on the Container agents / Main Line Operators (MLO)s. However, incase of container from / to ICDs / Customs Notified CFS, the concerned CFS / ICD operator can also pay the port charges.

(Rani Jadhav)
Chairperson

SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS / DIFFERENT USER ORGANISATIONS

No.TAMP/12/2008-KOPT

- Proposal from the Kolkata Port Trust for an amendment of its Scale of Rates to recognize CFS / ICD operators for payment of port charges.

A Summary of the comments received from the users / organization bodies of users and the comments of KOPT thereupon are tabulated below:

Sr. No.	Comments of the users	Response of KOPT
1.	A.L. Logistics Pvt Ltd (ALLPL)	
	ALLPL welcome such amendment in KOPT SOR, since it facilitates smooth removal of containers to CFS.	KOPT has no comments to offer.
2.	Bengal National Chamber of Commerce & Industry (BNCCI)	
	Members of the BNCCI have no objection to the proposal received from the KOPT as long as there is no 'Double Charging' by KOPT on this account. The KOPT proposal will greatly convenience the trade	The proposal of KOPT is only to facilitate payment of container related port charges for containers from / to ICDs / CFS by ICD / CFS operators also and not to restrict such payment only by the container agents / MLOs. There is no question of Double charging.
3.	Shipping Corporation of India (SCI)	
	SCI confirms its agreement with the KOPT proposal.	KOPT has no comments to offer.
4.	Association of Shipping Interests in Calcutta (ASIC)	
	The ASIC is in agreement with the proposal of KOPT, however, while port charges may be debited to CFS / ICD operators' account, removal of containers should continue as per present system based on "No Objection" from line on Form – 1.	It is clarified that the existing system of movement of containers to CFS / ICDs with the consent of line will continue to be followed even if the port charges is debited to CFs / ICD operators' account.
5.	The Container Shipping Lines Association (India) (CSLA)	
	The CSLA has no comments to offer on the KOPT proposal in reference.	KOPT has no comments to offer
6.	The Oriental Chamber of Commerce (OCC)	
	OCC agree with the KOPT proposal for an amendment to its SOR to recognize CFS / ICD operators for payment of port charges	KOPT has no comments to offer.
7.	Central Warehousing Corporation (CWC)	
	CWC has already requested vide its letter dated 9 August 2007 to allow CWC (CFS Operator) to pay port charges on behalf of its customers to facilitate hassle free services to the customers, increase comfort level to KOPT in realization of its dues from a single agency rather than different customers, facilitate quicker removal of containers from the port to reduce congestion and value addition to the services of port related agencies. Necessary amendment to Section 3(v) of the Scale of Rates of KOPT may be done:	The CWC has also proposed for amendment of the relevant portion of Section 3(v) of the Scale of Rates of KOPT, which is in line with the proposal of KOPT. Therefore, KOPT has no further comments to offer.

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