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TARIFF AUTHORITY FOR MAJOR PORTS

G No. 248

New Delhi

22 August 2014

NOTIFICATION

In exercise of the powers conferred under 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 Kandla Port Trust (KPT) proposing amendment to the Order No. TAMP/41/2012-KPT dated 13 August 2013 passed by this Authority disposing of the proposal filed by the Kandla Port Trust (KPT) for fixation of per tonne rate for on-board labour in lieu of levy and other charges of Cargo Handling Division (CHD) of the port.

(T.S. Balasubramanian)
Member (Finance)

TARIFF AUTHORITY FOR MAJOR PORTS
Case No. TAMP/41/2012-KPT

Kandla Port Trust

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Applicant

QUORUM:

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. Chandra Bhan Singh, Member (Economic)

ORDER

(Passed on this 4th day of August 2014)

This case deals with the amendment proposed by the Kandla Port Trust (KPT) to a Note prescribed in the Order No. TAMP/41/2012-KPT dated 13 August 2013 passed by this Authority relating to the proposal filed by the Kandla Port Trust (KPT) for fixation of per tonne rate for on-board labour in lieu of levy and other charges of Cargo Handling Division (CHD) of the port.

2.1. This Authority had passed an Order No. TAMP/41/2012-KPT dated 13 August 2013 disposing of the proposal filed by the KPT for fixation of per tonne rate for on-board labour in lieu of levy and other charges of CHD of the port which was notified in the Gazette of India on 2 September 2013 vide G. No.229.

2.2. Based on the submissions made by the KPT the following Note was prescribed below clause 3-Charges for Composite Rate for On-Board Labour of Cargo Handling Division at Kandla Port Trust, attached as Annex-IV to the Order:

“The revenue for actual quantity handled by a stevedore to be divided by the actual numbers of gangs supplied to arrive at the per gang cost and compare the same with the revenue requirement per gang. If the actual revenue per gang is more than the maximum average revenue requirement per gang i.e. ₹24,555/-, the surplus will be refunded to the stevedore while in case of shortfall the same shall be recovered from the stevedore.”

3. In this context, the KPT, vide its letter dated 10 March 2014, has made the following submissions:

- (i). While reproducing the Note under clause 3 in Annexure IV to the said Order, the KPT has stated that the same average revenue requirement of ₹24,555/- has been prescribed for both coastal as well as foreign cargo. Thus, the benefit of rebate of 40% available to coastal cargo as per directives of Government of India (GOI) has been taken away.
- (ii). In this connection, the Kandla Stevedores Association Ltd. (KSA) has addressed a letter dated 27 January 2014 to the KPT, a copy of which is forwarded by the port with its letter dated 10 March 2014. The KSA in its above letter as stated as below:
 - (a). The foot note at Annex-IV in TAMP Notification dated 13 August 2013 mentions the revenue requirement of ₹24,555/- per gang without bifurcation of foreign and/or coastal cargo.
 - (b). In absence of a bifurcation in the per gang rate requirement, giving effect to the 40% rebate on Coastal rates as envisaged in the per MT rates is not practically possible.
 - (c). In view of above, the KSA has requested the KPT to address the anomaly suitably and to request TAMP to notify the bifurcation based on applicable formula in per gang rates for foreign and coastal cargo respectively.

- (iii). The issue raised by KSA has been examined by the KPT and the port has worked out the revised per gang average revenue requirement (for the purpose of Note only) by factoring a rebate of 40% to coastal cargo as under:

- | | | |
|--|---|-----------|
| (a). Foreign cargo
(Other than iron ore and thermal coal) | : | ₹25,578/- |
| (b). Coastal cargo
(Other than iron ore and thermal coal) | : | ₹15,347/- |

The KPT has also stated that the average revenue requirement per gang for iron ore and thermal coal will, however, be un-changed at ₹24,555/- for both coastal as well as foreign cargo.

- (iv). In view of the above, the KPT has requested to modify the said Note under clause 3 of Annexure–IV. The KPT has also furnished Resolution passed by its Board of Trustees in its meeting held on 11 February 2014 approving the following note for removing the anomaly in the existing note relating to revenue requirement for handling foreign and coastal cargo:

“The revenue for actual quantity handled by a stevedore to be divided by the actual numbers of gangs supplied to arrive at the per gang cost and compare the same with the revenue requirement per gang. If the actual revenue per gang is more than the maximum average revenue requirement per gang i.e. ₹25,575 for Foreign Cargo (other than iron ore and thermal coal), ₹15347/- for Coastal Cargo (other than iron ore and thermal coal) and ₹24,555/- from iron ore and thermal coal, the surplus will be refunded to the stevedore while in case of shortfall, the same shall be recovered from the stevedores.”

4. With regard to the points made by the KPT in its letter dated 10 March 2014 and scrutiny of the said letter, the following emerges:

- (i). Based on the proposal filed by the KPT in June 2012, this Authority has approved the composite handling rates for deployment of labour from the Cargo Handling Division (CHD) of the KPT vide Order No. TAMP/41/2012-KPT dated 13 August 2013.
- (ii). As recorded in para 3.1. (vi) of the said Order, in order to recognise productivity the KPT had proposed a mechanism to reward productivity achievement in CHD. In the said scheme, revenue earned by a stevedore from handling actual quantity is divided by the actual numbers of gangs supplied to arrive at the per gang cost. This per gang cost is compared with the annual revenue requirement per gang considered in determining the levy. If it is seen on comparison that the revenue per gang is more than the maximum revenue requirement per gang, the surplus would be refunded to the stevedore while in case of shortfall the same shall be recovered by the KPT from the stevedore.
- (iii). As recorded in para 10(xx) of the said Order, the port had expressed difficulties in proposing productivity linked rates (cargo wise) citing that there are fifty different types of dry cargo items handled at Kandla with each having different productivity levels and grouping these cargo items is a tedious process. In view of that the KPT had submitted that prescribing productivity linked rates for each cargo type would complicate the realization of charges from port users. The KPT had, therefore, opined that the methodology envisaged by it will recognise productivity instantly and is very easy to implement and is understood by stevedores and operating staff.

- (iv). Based on the submissions made by the KPT, this Authority had prescribed a note under the schedule which is brought out in para 2.2. above. It is relevant here to mention that the said note is as per the proposal of the KPT with the only difference being that this Authority specifically prescribed the average revenue requirement per gang at ₹24,555/- which was based on the estimates considered by this Authority as attached as Annex-II of the Order. It is, however, noteworthy that the KPT has no issue on the estimated average revenue requirement of ₹24,555/- per gang.
- (v). The submission made by KPT is that whilst the unit rate is derived considering the revenue requirement of ₹24,555/- per gang and separate per tonne rate is prescribed cargo-wise for foreign cargo and concessional rate for entitled coastal cargo at 60% of the rate prescribed for its foreign counterpart, the note prescribed for productivity achievement/ non-achievement does not prescribe separate revenue requirement amount for coastal cargo.
- (vi). The KPT has proposed to amend the existing note to incorporate revenue requirement per gang for foreign cargo (other than iron ore and thermal coal) at ₹25,578/- and coastal cargo (other than iron ore and thermal coal) at ₹15,347/- as against the uniform revenue requirement of ₹24,555/- per gang prescribed as per the existing Scale of Rates. For iron ore and thermal coal, the KPT has proposed to retain the revenue requirement at ₹24,555/- as these cargoes are not entitled for coastal concession as per the Government policy.
- (vii).(a). In this context, it is noteworthy that the Annual Revenue Requirement estimated at ₹24,555/- per gang in the Order dated 13 August 2013 is considered for arriving at the per tonne levy. It is relevant here to mention that the unit per tonne rate of CHD levy for foreign cargo prescribed in the Order dated 13 August 2013 already captures the impact of coastal concession applicable for the entitled cargo i.e. cargo other than thermal coal and iron ore. The KPT has now recomputed the average revenue per gang a higher level of at ₹25,578/- for foreign cargo (other than thermal coal and iron ore) apparently capturing the effect of coastal concession. The revenue requirement per gang estimated at ₹24,555/- in the said Order which forms the base for arriving at the per tonne levy for all commodities need not undergo any change as the impact of coastal concession has already been captured for the entitled cargo. To cite an example, applying the unit levy approved for foreign cargo for fertilizer at ₹59.51 per tonne and ₹35.71 per tonne for coastal cargo, the total revenue for the traffic projected from this fertilizer cargo comes to ₹660,21,817 and ₹44,01,454 for foreign cargo and coastal cargo respectively aggregating to ₹704,23,271. Considering 2868 gangs estimated to handle the projected fertilizer cargo traffic, the per gang revenue will come to ₹24,555/- (i.e. ₹70423272 / 2868 gangs). Thus, it is reiterated that since the impact of coastal concession for eligible coastal cargo is already captured while arriving at the levy for foreign cargo, the approach adopted by the KPT to re-compute the per gang revenue for cargo (other than thermal coal and POL) is not found to be correct. Hence, the proposal of the KPT to alter the average revenue requirement for prescription in the note at ₹25,578/- for foreign cargo is not acceptable.
- (b). It is, however, admitted that the anomaly in the note pointed out by KPT merits consideration. It has to be recognised that for implementation of the note prescribed under the schedule, if concessional amount (revenue) for coastal cargo, is not indicated it would lead to an anomaly as the Order prescribes concessional rate for coastal cargo, but for comparison with the revenue requirement per gang such concessional amount is not prescribed. In short, as per the existing note even if higher productivity is achieved by handling coastal cargo and realising less revenue because of concessional rate of levy, the stevedores will be penalised and will have to pay to KPT instead of being rewarded for productivity achievement. Hence, to remove this anomaly, the note needs to be suitably modified to state that for coastal cargo, other than thermal coal and iron ore including pellets, the maximum revenue requirement per gang

has to be reckoned as ₹14,733/- per gang (i.e. 60% of ₹24,555/- per gang). It is relevant here to state that the proposed modification in the note will not in any way alter the revenue requirement estimated in the tariff Order dated 13 August 2013 or the per tonne levy approved in the said Order. The amendment proposed is to enable KPT to implement the prescribed note under the schedule by removing the anomaly.

- (viii). Accordingly, the existing note below the said clause 3 is replaced by the following note:

“The revenue for actual quantity handled by a stevedore is to be divided by the actual numbers of gangs supplied to arrive at the per gang cost and compare the same with the revenue requirement per gang. If the actual revenue per gang is more than the maximum average revenue requirement per gang i.e. ₹24,555/- for handling foreign cargo or ₹14733/- for handling coastal cargo (other than thermal coal and POL including crude oil, iron ore and iron ore pellets), the surplus will be refunded to the stevedore while in case of shortfall the same shall be recovered from the stevedore.”

- (ix). The said Order dated 13 August 2013 was notified in the Gazette of India on 2 September 2013. The rates approved in the said Order are effective from 30 October 2013. Ordinarily, the Orders approved by this Authority are implemented after expiry of 30 days from the date of notification of the Order in the Gazette. However, it is noteworthy that the note to which amendment is proposed is a condition governing the rates prescribed in clause 3. Since the amendment approved to the note is to rectify the anomaly in the existing note, the amendment is made effective from the date the revised CHD levy approved vide Order No.TAMP/41/2012-KPT dated 13 August 2013 came into effect.

Incidentally, it also noteworthy that even the KPT in its Board meeting held on 11 February 2014 vide Resolution No.180 has decided to implement the note as per the amendment proposed by it subject to approval of this Authority. Hence, the proposed amendment is made effective retrospectively from the date the Order No. TAMP/41/2012-KPT dated 13 August 2013 came into effect.

- 5.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority decides to replace the existing note under clause 3 of Chapter III approved vide Order No. TAMP/41/2012-KPT dated 13 August 2013 with the following note:

“The revenue for actual quantity handled by a stevedore is to be divided by the actual numbers of gangs supplied to arrive at the per gang cost and compare the same with the revenue requirement per gang. If the actual revenue per gang is more than the maximum average revenue requirement per gang i.e. ₹24,555/- for handling foreign cargo or ₹14733/- for handling coastal cargo (other than thermal coal and POL including crude oil, iron ore and iron ore pellets), the surplus will be refunded to the stevedore while in case of shortfall the same shall be recovered from the stevedore.”

- 5.2. The amendment approved will be effective from the date the Order No. TAMP/41/2012-KPT dated 13 August 2013 came into effect.

- 5.3. The KPT is advised to suitably modify the relevant note in its Scale of Rates.

(T.S. Balasubramanian)
Member (Finance)