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TARIFF AUTHORITY FOR MAJOR PORTS

G.No.249 **New Delhi,** **14 July 2015**

NOTIFICATION

In exercise of the powers conferred under Sections 48, 49 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from Mumbai Port Trust (MBPT) for amending the definition of 'Day' in the Scale of Rates of Mumbai Port Trust (MBPT), as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports

Case No. TAMP/28/2015-MBPT

The Mumbai Port Trust - - - Applicant

QUORUM

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

O R D E R

(Passed on this 2nd day of July 2015)

This case relates to a proposal received from Mumbai Port Trust (MBPT) seeking approval for amendment in the definition of 'Day' in the Scale of Rates of Mumbai Port Trust (MBPT).

2. The Scale of Rates of MBPT was last approved by this Authority vide its Order dated 02 January 2015. The Scale of rates of MBPT was notified in the Gazette of India on 19 January 2015 vide Gazette No. 19.

3. The MBPT vide its letter dated 17 April 2015 has submitted a proposal for amending the definition of 'Day' in its existing Scale of Rates approved in January 2015. The submissions made by MBPT as seen from the documents furnished by the MBPT are as follows:

(i). The existing Scale of Rates of MBPT are approved by the Authority vide Gazette No.19 dated 19 January 2015. In the said Scale of Rates, the definition of 'Day' is provided under Clause 1.1(vii) as given below:

"Day means a calendar day i.e. the period from the midnight of a day to the midnight of the following day".

(ii) As per Section 3.1(B) of the Scale of Rates, demurrage is recovered on the cargo after expiry of free days at the rate provided in SOR. Thus, the cargo which is cleared from the docks after expiry of last free days (in terms of definition of 'Day' in SOR) attracts demurrage if it is cleared after midnight of the last free day or thereafter.

(iii). The issue of charging demurrage on cargo loaded on trucks for delivery beyond midnight and consequential detention of loaded vehicles inside the dock has been raised by Port users/ Ports User's Association time and again in the past. They have been requesting MBPT to change the definition of 'Day in the SOR which would also mitigate the traffic congestion or delays in movement of outward loaded trucks meant for delivery from the Dock gates.

(iv). This issue was also deliberated by a Committee constituted for examining the problems faced by the trade. The recommendation made by the committee is as under:

"Port should change the 'day' hrs from midnight of a day to midnight of following day to 0800hrs – 0800 hrs on the following day on the lines of the CSFs at JNPT so that delivery of cargo can be continued to IIIrd shift, without insisting for demurrage."

(v). Considering the request made by Users/ User Organisations and the fact that other Ports (KOPT, PPT, VPT, CHPT, VOCPT, COPT) are having definition of 'Day in their respective Scale of rates starting from 0600 hours of a day which is

commencing on first shift and also to mitigate the problem of traffic congestion, the MBPT Board has accorded approval vide TR No.243 of 27.3.2015 to the amendment in the definition of 'Day in SOR as given below:

"Day Shall mean the period starting from 0800 hours of a day and ending at 0800 hours of the following day".

(vi). In view of above, MBPT has requested this Authority to approve the amendment in the definition of 'Day' as brought out above.

4.1. In accordance with the consultative procedure prescribed, a copy of the MBPT proposal dated 17 April 2015 was taken up on consultation with Indira Container Terminal Private Limited (ICTPL) and concerned users/ user organisations seeking their comments. Only Brihanmumbai Custom House Agents' Association (BCHAA) vide its email dated 08 May 2015 and Mumbai & Nhava-Sheva Ship Agent's Association (MANSA) vide its email dated 13 May 2015 have furnished their comments. None of the other users have furnished their comments, till the case was disposed of.

4.2. The BCHAA has given its concurrence to the amendment proposed by MBPT and MANSA has stated that they have no objection to the proposed change.

5. A joint hearing on the case in reference was held on 18 May 2015 at the office of this Authority in Mumbai. At the joint hearing, MBPT and users/ user organisations have made their submissions.

6. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the 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 this case, the following position emerges:

(i). The existing Scale of Rates of MBPT defines the term 'Day' as 'Day means a calendar day i.e. the period from the midnight of a day to the midnight of the following day'. According to MBPT, this is leading to a position where a loaded vehicle meant for delivery in the 2nd shift (the 2nd shift gets over at 2330 hours), are retained at the Gate after 2330 hours, so that the cargo attracts demurrage in view of the definition of 'day' prescribed in the MBPT Scale of Rates. This is reported to cause congestion at MBPT, which in turn has led to MBPT receiving complaints from the relevant stakeholders. Therefore, the MBPT has come up with a proposal for amending the definition of day.

(ii). The MBPT has reported that a Committee constituted by the MBPT for examining the problems faced by the trade, has, *interalia*, recommended to change the definition of 'day' from midnight of a day to midnight of following day to 0800hrs – 0800 hrs on the following day so that delivery of cargo can be continued in the IIIrd shift, without being insisted for demurrage.

(iii). As seen from the Scale of Rates of majority of other Major Port Trusts and as also brought out by MBPT itself, the Scale of Rates of majority of other Major Port Trusts define day beginning from the start of the 1st shift (06.00 hrs.) and ending at 06.00 hrs on the next day. It is in view of this position that the MBPT has proposed to amend the definition of day so that the day begins from the start of the 1st shift.

(iv). Since the first shift at MBPT begins at 0800 hrs in the morning, the MBPT has proposed amendment in the definition of day in such a manner that Day shall mean the period starting from 0800 hours of a day and ending at 0800 hours of the following day.

(v). Given that the amendment proposed by the MBPT to the definition of day has the approval of its Board of Trustees and is seen to be in line with the recommendation made by the Committee constituted for examining the problems faced by the trade and also since the proposed amendment is reported to mitigate the traffic congestion and delay in the movement of outward loaded trucks meant for delivery from the Dock gates, this Authority is inclined to accede to the request made by the MBPT to amend the definition of day, as proposed by the Port.

(vi). As brought out earlier, the MBPT, on the ground that it has already issued a circular to the Trade intimating them about the amendment to the definition of "Day" with effect from 1 April 2015, has sought approval to the proposed amendment with effect from 1 April 2015. In this regard, it is to state that the 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 exceptional cases, retrospective effect is given for reason to be recorded. In the case in reference, the users have agreed for retrospective effect to the change in the definition of day with effect from 01 April 2015. In view of the consent given by the users, the amendment effected in the definition of day is deemed to have come into effect from 01 April 2015. However, the MBPT is advised to refrain from issuing Circulars to Trade intimating about change in the Scale of Rates and conditions, prior to this Authority according approval to the proposed changes.

8.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority accords approval to replace the existing definition of 'Day' as prescribed in the Clause 1.1 (vii) of the MBPT Scale of Rates, with the following definition:

"Day Shall mean the period starting from 0800 hours of a day and ending at 0800 hours of the following day".

8.2 The MBPT is advised to suitably modify the relevant note in its Scale of Rates.

8.3. The said amendment shall come into effect from 01 April 2015.

(T.S. Balasubramanian)
Member (Finance)

SUMMARY OF THE ARGUMENTS MADE BY THE PORT USERS / DIFFERENT USER ORGANISATIONS IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY

F. No.TAMP/28/2015- MBPT - Proposal received from Mumbai Port Trust (MBPT) for approval of amendment in the definition of 'Day' in the Scale of Rates of Mumbai Port Trust (MBPT).

A joint hearing on the case in reference was held on 18 May 2015 at the office of the Authority in Mumbai. At the joint hearing, MBPT and users/ user organisations have made the following submissions:

Mumbai Port Trust (MBPT)

(i). As per current definition, Day means the period from midnight to midnight. The first shift of MBPT starts at 8:00 a.m. and second shift ends at 11:30 p.m. Loaded vehicles meant for delivery during second shift which starts at 5:00 p.m. and continues upto 11:30 p.m. are retained at the Gate after 11:30 p.m./ midnight since cargo attracts demurrage in view of definition of Day.

(ii). Port constituted a Committee of senior officials of MBPT which included representative of Brihanmumbai Custom House Agents' Association (BCHAA) and Mumbai & Nhav-Sheva Ship Agent's Association (MANSA).

(iii). The Committee recommended to change the definition of "Day" to 8:00 a.m. to 8:00 a.m. so that delivery of cargo can be continued to third shift without insisting for demurrage. It is in line with the definition of Day in other ports. Our Board has accorded approval to the amendment in the definition of "Day".

(iv). We have issued circular in this regard to the Trade effective from 1 April 2015. We request TAMP to approve the amendment to the definition of "Day" with effect from 1 April 2015.

Mumbai & Nhava-Sheva Ship Agent's Association

(i). We appreciate MBPT for this relief. We agree for amendment to the definition from 1 April 2015.

Brihanmumbai Custom House Agents' Association (BCHAA)

(i). The Committee has recommended to the amendment. BCHAA was part of the Committee. We also agree for the amendment from 1 April 2015.

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