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Tariff Authority for Major Ports

G.No. 400 **New Delhi,** **11 December 2015**

NOTIFICATION

In exercise of the powers conferred by Sections 48 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby issues amendment to the provisions prescribed in the common adoption Order No.TAMP/53/2015-VOCPT passed by this Authority on 29 September 2015 with reference to the application filed by V.O. Chidambaranar Port Trust seeking clarification regarding levy of concessional charges for coastal cargo/ container, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports

Case No.TAMP/53/2015-VOCPT

O R D E R

(Passed on this 26th day of November, 2015)

This Authority vide its Order No.TAMP/53/2015-VOCPT dated 29 September 2015 has disposed of the application filed by V.O. Chidambaranar Port Trust (VOCPT) seeking clarification regarding levy of concessional charges for coastal cargo/ container by passing a common adoption Order for Major Port Trusts and Private Terminal Operators thereat giving immediate effect to the said Order.

1.2. A copy of the Order dated 29 September 2015 was forwarded to all Major Port Trust, all relevant BOT operators, Director General (Shipping) and relevant users vide our letter dated 29 September 2015.

2. In this connection, the PSA SICAL vide its letter dated 9 October 2015 has made submissions. The main submissions made by the PSA SICAL are summarised below:

(i). In the TAMP's clarification, a missing link is created in the customs conversion order requirement for applicability of Coastal Tariff for Coastal containers carried on Indian or Foreign Flag foreign going vessels in point 9C.

(ii). While point 9A and 9B talk about Customs Conversion as a pre-requisite for availing the concessional Vessel Related Charges, it is silent on this front for Cargo Related Charges. Under this, it can be misinterpreted that the Foreign Going Indian Flag (or foreign) vessels can claim coastal tariff for coastal containers without converting into coastal run. This will result in Vessel Related Charges being paid for Foreign Run and Coastal tariff being charged for coastal containers. In an effect, this creates non-level playing field between Port and Terminal and will definitely result in discriminate treatment among Port and Terminal.

(iii). PSA SICAL Terminals Limited, Tuticorin have been following the guidelines issued by TAMP vide the common adoption order No.TAMP/2/97-MPT dated 2 June 1998 for the application of coastal tariff and no ambiguity has arisen out of the said procedure. The coastal vessels are eligible by default for coastal tariff and the foreign going Indian vessels need to submit the Customs Conversion Order to avail the concessional coastal tariff.

(iv). The latest TAMP Order prescribes the criteria for availing concessional Vessel Related Charges (VRC) and Cargo Related Charges (CRC).

(v). In 9A and 9B, the Custom Conversion Order requirement is pre-requisite criteria for availing the benefits of coastal VRC, whereas paragraph 9C, arbitrarily and without any justification dispenses with this requirement for the purposes of CRC.

(vi). If the TAMP Order were to be implemented, the Port Trusts would continue to earn money on VRC without any impact and it is only the BOT operators who would suffer as a result of the TAMP Order.

(vii). The TAMP Order may incentivize foreign going Indian vessels not to obtain Custom Conversion Certificates and to convert to coastal run, as they can avail concessional CRC rates without obtaining the Customs Conversion Certificate by virtue of the TAMP Order. It is hence also important to understand the stand of the Customs Department on this issue regarding the change in the existing procedure.

(viii). The above will cause severe hardship to the BOT Operators in particular and result in unfair discrimination between Port Trusts and BOT Operators.

(ix). The issues raised including the details of documents to be submitted to the terminal by a vessel for availing the concessional coastal tariff and the stand of the Customs Department on the issue may be clarified.

(x). An opportunity of hearing and making a representation in this regard may be provided.

(xi). Pending clarifications to the above issue, it has requested to refrain from notifying or implementing the TAMP Order and allow it to continue charging on the basis of the existing regime.

3. In the meantime, the INSA sent an email dated 15 October 2015 addressed to DG Shipping, VOCPT and to this Authority. The INSA has requested urgent intervention to ensure that PSA SICAL gives full effect to the said order of this Authority without any excuse and that if PSA SICAL wishes to obtain some kind of clarification etc. they are free to do so. Pending their obtaining clarification, INSA has requested that full effect must be given to the said order of this Authority as the same is valid and subsisting now.

4. The issue raised by the PSA SICAL and the submissions of the INSA were communicated to the DG (Shipping) vide our letter dated 23 October 2015 along with draft modifications to clauses 9(A), (B) and (C) of the Order dated 29 September 2015 with a request to examine the modified clauses in light of the issues raised by the PSA SICAL.

5.1. In the meantime, an interim communication was sent to PSA SICAL with a copy endorsed to VOCPT and DG (Shipping) vide our letter dated 26 October 2015 stating that the intention of this Authority in prescribing the provisions at para 9(C)(ii)(a) of the said Order is very explicit that cargo/ container loaded from any Indian port and destined for any other Indian port should be levied the concessional rate applicable for coastal cargo/ container irrespective of the status of the vessel and that this flows from Section 51 of the Major Port Trusts Act, 1963 which calls for prescription of lower rate for coastal goods carried in a vessel from one Indian port to another Indian port, as already recorded in our Order dated 29 September 2015.

5.2. The PSA SICAL was also advised to implement the Order dated 29 September 2015 passed by this Authority. It was stated that a detailed clarificatory Order will be issued in due course of time after receipt of response from DG Shipping.

6.1. We have also received communication dated 2 November 2015 from the India Gateway Terminal Pvt. Ltd. (IGTPL) giving its comments/ views on the Order dated 29 September 2015 passed by this Authority.

6.2. It is relevant here to state that the IGTPL was intimated about the consultation process initiated on the application earlier filed by the VOCPT alongwith other stakeholders. At that point of time, the IGTPL did not furnish any comments / response. Now, referring to the Order dated 29 September 2015, IGTPL has sought clarifications on provisions prescribed at para 9(C) and has also suggested amendments to a few clauses to bring clarity and has requested this Authority to amend the Order accordingly. The points made by the IGTPL, amendment suggested by IGTPL to the September 2015 Order of this Authority along with our analysis thereon are given below:

(i). <u>Clause 9(C)(i)</u>

The clause mentions that in the case of Foreign going Indian vessel having General Trading License issued for 'Worldwide and Coastal' operation should be charged coastal rates. As per this clause, even containers destined for a Foreign port will have to be charged at coastal rates. The clause to be amended to exclude containers destined for Foreign ports or coming from Foreign ports.

Amendment proposed by IGTPL: Foreign going Indian vessel having General Trading License issued for 'worldwide and coastal' operation should be accorded applicable coastal rates for coastal cargo/ container with respect to Handling

Charges (HC) i.e. ship to shore transfer and transfer from/ to quay to/ from storage yard including wharfage.

Analysis:
The point made by the IGTPL is to add the words "coastal cargo/ container" or else containers destined for a Foreign port will have to be charged at coastal rates. In the revised formulation received from DG (Shipping) vide their letter dated 19 November 2015 which is brought out in the subsequent paragraph, the point made by IGTPL is taken care of. The word "cargo" added in the amended provision is to be taken broadly to cover cargo as well as container.

(ii). Clause 9(C)(ii)(a):

The clause mentions that containers moved between two Indian ports should be charged coastal tariff irrespective of the flag of the vessel. Thus, a Foreign vessel could also move containers between Indian ports without conversion to coastal run. This seems to be contrary to Sec 407 of The Merchant Shipping Act which permits only Indian vessels or vessels converted for coastal run for movement of cargo/ containers between Indian ports.

Amendment proposed by IGTPL: Cargo / container loaded from any Indian Port and destined for any other Indian Port should be levied the rate applicable for coastal cargo / container provided the containers are carried by vessels duly converted for coastal run or Foreign going Indian vessel having General Trading License issued for 'worldwide and coastal' operation.

Analysis:
The modified provision at 10(ii) prescribed by this Authority based on the revised formulation received from the DG Shipping will take care of the point made by the IGTPL.

(iii). Clause 9(C)(ii)(b):
This will further increase the cost of Indian exports. Moreover, permitting foreign flag vessels to move cargo/ containers between Indian ports seems contrary to the requirements of Sec 407 of the Merchant Shipping Act. Movements between Indian ports should continue to be charged at coastal rates. Earlier TAMP Order No.TAMP/4/2004-Genl dated 7 January 2005, clause 3 (v & vi) is clear in this respect.

Amendment proposed by IGTPL: Cargo / container loaded from any Indian Port and unloaded at any other Indian Port as a transit cargo / container but is finally destined to/ from any Foreign Port will qualify for coastal tariff insofar as the charges relevant for its coastal voyage.

Analysis:
The DG (Shipping) vide its communication dated 19 November 2015 has suggested to delete provision prescribed in 9(C)(ii)(b) of the Authority's Order dated 29 September 2015 citing that the provision relates to exim (foreign) cargo.

7.1. The DG (Shipping) undercover of their e-mail dated 7 November 2015 has addressed a letter each to Central Board of Excise and Customs (CBEC) and Indian Port Association (IPA) with a copy endorsed to this Authority giving a brief background of the matter, the Order dated 29 September 2015 passed by this Authority, the concerns of PSA SICAL with a request to CBEC and IPA to provide inputs and also to make it convenient to attend the meeting scheduled to be held on 16 November 2015 to discuss the matter.

7.2. The DG (Shipping) vide their email dated 9 November 2015 convened a meeting on 16 November 2015 to discuss the issue raised by PSA SICAL with reference to the Order dated 29 September 2015 passed by this Authority.

8.1. The meeting was represented by VOCPT, CBEC, Indian National Ship Owners' Association (INSA), Indian Private Ports and Terminals Association (IPPTA), officials of this Authority, Shreyas Relay System Ltd., ICC Shipping Association and Southern India Mills Association (SIMA). The Secretary General, Indian Private Ports and Terminals Association (IPPTA) was also present in the meeting representing the private terminals, including the PSA SICAL. Since the DG (Shipping) initiated consultation process, a separate consultation process by this Authority on the same matter was not felt necessary.

8.2. As per the communication No.SD-12/Misc(17)/14 dated 19 November 2015 received from the DG (Shipping), the issue raised by the PSA SICAL that when a foreign going Indian flag vessel moves domestic cargo/ container without a customs conversion order port will charge vessel related charges at foreign going rates while the terminal will charge cargo related charges at concessional rates and therefore the Order dated 29 September 2015 issued by this Authority is discriminatory was discussed in the meeting. As recorded in the communication of DG (Shipping), the Commissioner (Customs), representing the Central Board of Excise & Customs (CBEC), Ministry of Finance (Department of Revenue), Government of India has conveyed that there is a special dispensation to foreign going Indian vessels, as per CBEC circular no.15/2002 dated 25 February 2002. As per the said circular dated 25 February 2002, foreign going Indian vessels are allowed to carry EXIM cargo as well as coastal cargo between Indian ports without obtaining the customs conversion order. The coastal cargo is clearly marked on such foreign going Indian vessel, for identification. The representative of vessel owners present in the meeting endorsed that foreign going Indian vessels can carry domestic cargo without customs conversion in terms of the CBEC circular dated 25 February 2002. Customs consider such cargo on board a foreign going Indian vessel as coastal cargo in view of CBEC circular, as submitted by the representatives of vessel owners. It has been reported by them in the meeting that all other ports in India are giving the concession to coastal cargo. It is also seen from the above referred communication of DG (Shipping) that after deliberation in the meeting, it has been concluded that the Vessel Related Charges (VRC) and Cargo Related Charges (CRC) are distinct and cannot be correlated. It is noteworthy that the IPPTA representative is in agreement with the position that no separate conversion order is required since the foreign going Indian vessels are allowed to carry coastal cargo as per the CBEC circular. He has stressed that the Order of this Authority may be modified to have more clarity that no conversion is required for carrying domestic cargo/ container on-board foreign going Indian flag vessel between Indian ports. As also recorded in the communication of DG (Shipping), the draft modification to clauses 9(A), (B) and (C) of the Order dated 29 September 2015 was circulated and discussed clause by clause in the meeting convened by DG (Shipping). The DG (Shipping) have conveyed the agreed modification under the cover of their letter dated 19 November 2015 to this Authority to issue the modified order. The provisions prescribed in para 9(A), 9(B), 9(C) of the common adoption Order No.TAMP/53/2015-VOCPT passed by this Authority on 29 September 2015 and the modified provisions are tabulated below:

Para No.	**Provisions prescribed in the Order dated 29 September 2015**	**Modified provisions as communicated by DG Shipping vide their letter No.SD-12/Misc(17)/14 dated 19 November 2015**
9(A)	**System of classification of vessel for levy of Vessel Related Charges (VRC)**	
(i).	A foreign going vessel of Indian flag having a General Trading Licence can convert to coastal run on the basis of a Customs Conversion Order. Such vessel that converts into coastal run based on the Customs Conversion Order at her first port of call in Indian Port, no further custom conversion is required, so long as it moves on the Indian Coast.	No Change.

(ii).	A foreign going vessel of foreign flag can convert to coastal run on the basis of a **Coastal Voyage** Licence issued by the Director General of Shipping.	A foreign going vessel of foreign flag can convert to coastal run on the basis of a **Specified Period Licence** issued by the Director General of Shipping and a **Custom Conversion order.**
9(B)	**Criteria for levy of Vessel Related Charges (VRC) at Concessional Coastal rate and foreign rate**	
(i).	In cases of such conversion, coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods.	No change.
(ii).	In cases of such conversion coastal rates shall be chargeable till the vessel completes discharging operations at the last call of Indian Port; immediately thereafter, foreign going rates shall be chargeable by the discharge ports.	No change.
(iii).	For dedicated Indian coastal vessels having a Coastal licence from the Director General of Shipping, no other document will be required to be entitled to coastal rates.	No change.
(C)	**Criteria for levy of Cargo Related Charges (CRC) at Concessional Coastal rate**	**Re-number it as 10.**
(i) (ii). (a). (b).	Foreign going Indian vessel having General Trading License issued for 'worldwide and coastal' operation should be accorded applicable coastal rates with respect to Handling Charges (HC) i.e. ship to shore transfer and transfer from/ to quay to/ from storage yard including wharfage. Further, Cargo / container loaded from any Indian Port and destined for any other Indian Port should be levied the rate applicable for Coastal cargo / container irrespective of whether a vessel is a foreign flag or Indian flag carrying the cargo / container. Cargo / Container loaded from any Indian Port and unloaded at any other Indian Port as transit cargo / container but is finally destined for any Foreign Port should be treated as Foreign cargo / container irrespective of whether the vessel carrying the cargo / container is foreign flag or Indian flag.	(i). Foreign going Indian Vessel having General Trading License issued for 'worldwide and coastal' operation should be accorded applicable coastal rates with respect to Handling Charges (HC) i.e. ship to shore transfer and transfer from/ to quay to/ from storage yard including wharfage **in the following scenario:** **(a). Converted to coastal run and carrying coastal cargo from any Indian Port and destined for any other Indian Port.** **(b). Not converted* to coastal run but carrying coastal cargo from any Indian Port and destined for any other Indian Port.** *** The Central Board of Excise and Customs Circular no.15/2002-Cus. dated 25 February 2002 allows carriage of coastal cargo from one Indian port to another port in India, in Indian flag foreign going vessels without any custom conversion**. (ii). **In case of a Foreign flag vessel converted to coastal run on the basis of a Specified Period License issued by the Director General of Shipping, and a Custom Conversion Order, the coastal cargo/ container loaded from any Indian Port and destined for any other Indian Port should be levied at**

		the rate applicable for coastal cargo/ container.
(iii).	Cargo / Container loaded from any Indian Port and unloaded at any other Indian Port as transit cargo / container but is finally destined for any Foreign Port should be treated as Foreign cargo / container irrespective of whether the vessel carrying the cargo/ container is foreign flag or Indian flag.	**Para deals with exim cargo containers and therefore proposed to be delinked from the present TAMP order. Hence (iii) may be removed.**

9. In pursuance of the suggestion given by the DG (Shipping), this Authority replaces the provisions prescribed in paras 9 A, 9B, 9C of the common adoption Order No.TAMP/53/2015-VOCPT dated 29 September 2015 with the following provisions as para 9A, 9B and 10 respectively:

"9A. <u>System of classification of vessel for levy of Vessel Related Charges (VRC)</u>

(i). A foreign going vessel of Indian flag having a General Trading Licence can convert to coastal run on the basis of a Customs Conversion Order. Such vessel that converts into coastal run based on the Customs Conversion Order at her first port of call in Indian Port, no further custom conversion is required, so long as it moves on the Indian Coast.

(ii). A Foreign going vessel of foreign flag can convert to coastal run on the basis of a Specified Period Licence issued by the Director General of Shipping and a custom conversion order.

9B. <u>Criteria for levy of Vessel Related Charges (VRC) at Concessional Coastal rate and foreign rate</u>

(i). In cases of such conversion, coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods.

(ii). In cases of such conversion coastal rates shall be chargeable till the vessel completes discharging operations at the last call of Indian Port; immediately thereafter, foreign going rates shall be chargeable by the discharge ports.

(iii). For dedicated Indian coastal vessels having a Coastal licence from the Director General of Shipping, no other document will be required to be entitled to coastal rates.

10. <u>Criteria for levy of Cargo Related Charges (CRC) at Concessional Coastal rate</u>

(i). Foreign going Indian Vessel having General Trading License issued for 'worldwide and coastal' operation should be accorded applicable coastal rates with respect to Handling Charges (HC) i.e. ship to shore transfer and transfer from/ to quay to/ from storage yard including wharfage in the following scenario:

(a). Converted to coastal run and carrying coastal cargo from any Indian Port and destined for any other Indian Port.

(b). Not converted* to coastal run but carrying coastal cargo from any Indian Port and destined for any other Indian Port.
* The Central Board of Excise and Customs Circular no.15/2002-Cus. dated 25 February 2002 allows carriage of coastal cargo from

one Indian port to another port in India, in Indian flag foreign going vessels without any custom conversion.

(ii). In case of a Foreign flag vessel converted to coastal run on the basis of a Specified Period License issued by the Director General of Shipping, and a Custom Conversion Order, the coastal cargo/ container loaded from any Indian Port and destined for any other Indian Port should be levied at the rate applicable for coastal cargo/ container.

11.1. All the Major Port Trusts are directed to amend their existing Scale of Rates accordingly by suitably incorporating the above amended provisions.

11.2. The Private Terminals operators in whose Scale of Rates the relevant conditions are prescribed are also directed to replace the provisions prescribed in this Authority Order dated 29 September 2015 with the modified provisions prescribed above.

12. Recognizing that this Order is only clarificatory in nature to the provisions approved by this Authority vide its Order No.TAMP/53/2015-VOCPT dated 29 September 2015, the amended provisions shall come into effect from the date the Order dated 29 September 2015 has come into effect.

(T.S. Balasubramanian)
Member (Finance)