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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 321 **New Delhi,** **17 August 2017**

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 Mumbai Port Trust (MBPT) for incorporation of RFID Tags charges in the SOR of MBPT, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/44/2017-MBPT

The Mumbai Port Trust - - - Applicant

QUORUM

(i). Shri. T.S. Balasubramanian, Member (Finance)
(ii). Shri. Rajat Sachar, Member (Economic)

O R D E R

(Passed on this 21st day of July 2017)

This case relates to a proposal filed by the Mumbai Port Trust (MBPT) for incorporation of RFID Tags charges in the SOR of MBPT.

2.1. The MBPT vide its letter No. FA/ACC/222/640 dated 18 May 2017 has filed the proposal on the subject cited above. The main points made by the MBPT in its proposal are summarized below:

(i). The MBPT is in the process of automation of vehicle registration module. Accordingly, the MBPT is implementing Radio Frequency Identification (RFID) based Access Control System, where provision is made to issue RFID tag to all the vehicles entering the dock premises to enable the long range RFID readers to read the tag and identify the vehicle for the gate automation.

(ii). In this connection, the MBPT has issued a circular dated 11 March 2017 to the Trade, *inter alia,* informing that RFID tag will be issued on payment of charges @ ₹34/- per vehicle with effect from 14 March 2017 and the same has commenced. [A copy of the circular is furnished by MBPT]. No objection was received from users with regard to the levy.

(iii). The Board of Trustees vide TR No. 186 dated 31.03.2017 has accorded sanction to include the following provision at Chapter IX - Miscellaneous Charges in the existing Scale of Rates of MBPT.

"All types of vehicles like cargo vehicles, cargo handling equipment, contractors' vehicles (material), passenger vehicles (car, etc.) will be levied RFID tag charges @ ₹34/- per vehicle.

In case of loss or damage of RFID tags, the same shall be issued on recovery of RFID Tags charges @ ₹34/- per vehicle.

The vehicles of MBPT employees will be exempted from levy of RFID charges".

[A copy of the Board Resolution is furnished by MBPT].

3. In accordance with the consultative procedure prescribed, a copy of the MBPT letter dated 18 May 2017 was forwarded to the concerned users/ user organizations vide our letter dated 26 May 2017 seeking their comments. We have not received any comments from any of the users / user organisations, till this order is passed.

4. Based on a preliminary scrutiny of the proposal, we have vide our letter dated 13 June 2017 sought the following additional information / clarification from the MBPT. In response, the MBPT vide its letter No. FA/ACC/222/1316 dated 29 June 2017 has responded. The information / clarification sought by us and the response of MBPT thereon are tabulated below:

No.	Information/ clarification sought by us	Response of MBPT
(i).	The MBPT has already commenced levy of RFID charges with effect from 14 March 2017 by way of issue of a Trade Circular much prior to even filing a proposal with us in May 2017. Levy of any charges by the Port which are covered by Section 48 of the Major Port Trusts Act, 1963, requires approval of this Authority. In this regard, the MBPT to clarify the position.	The reasons have been amply clarified in the joint hearing held by TAMP on 20 June 2017.
(ii).	The MBPT may also intimate the date from which it seeks approval for the RFID charges. If the port wishes to seek approval from the date of commencement of levy and in the event the final rate to be approved by this Authority is different from the rate collected by MBPT till date, the MBPT to indicate the treatment envisaged by it for the differential amount so collected.	It was further submitted to TAMP during the joint hearing to allow levy of RFID charges with effect from 14 March 2017.
(iii).	The MBPT has proposed a rate of ₹34/- per vehicle towards RFID Tag charges by considering a base rate of ₹28/- per vehicle and after considering statutory taxes viz., Value Added Tax (VAT) and Octroi charges. In this regard, it is to state that the tariff approved by this Authority is exclusive of any taxes and statutory duties. The taxes and statutory duties are to be levied by the Port at the applicable rates on the tariff so approved by this Authority. Thus, the MBPT to note that this Authority would grant approval only for the base RFID Tag charges.	MBPT is implementing RFID based Access Control System wherein provision is made to issue RFID tag to all the vehicles entering the Dock premises to enable the long range RFID readers to read the tag and identify the vehicle for the gate automation. The matter was represented during the joint hearing for a rate of ₹.34/- per vehicle towards RFID tag charges, which include the Value Added Tax and Octroi charges or GST as the case may be.
(iv).	Workings in support of the proposed base RFID Tag charges of ₹28/- per vehicle.	The charge of RFID tag have been considered on cost to cost basis to be reimbursed to M/s. Wipro who are implementing the Gate Automation for which contract has been awarded to M/s Wipro Ltd. No other charges are levied from the users.
(v).	Documentary evidence in support of the cost elements considered in the workings at (iv) above.	Copy of price bid submitted by successful bidder M/s. Wipro Ltd. Is furnished. The relevant cost item is highlighted. (From the price bid, it is seen that an amount of ₹ 28/- has been prescribed for RFID tags and a component of VAT at 12.5% and Octroi charges at 5.5% has been indicated.
(vi).	Additional revenue that would accrue to MBPT per annum on account of the levy of the proposed RFID charges.	No additional revenue will accrue to MBPT per annum, as no administrative cost has been considered against the RFID charges.

5. A joint hearing on the case in reference was held on 20 June 2017 at the office of this Authority in Mumbai. At the joint hearing, the MBPT has made its 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 MBPT 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 the case, the following position emerges:

(i) As part of Government's initiative of 'Ease of doing business', the Mumbai Port Trust (MBPT) has implemented the Radio Frequency Identification (RFID) based Access Control System, where one time RFID tags will be issued to all the cargo vehicles and passenger vehicles entering the dock premises to enable the long range RFID readers to read the tag and identify the vehicle for the gate automation. The proposed RFID project is reported to facilitate the port to monitor the vehicle entering the docks with complete track of movement, overstayal and cargo details, etc. Thus, the proposal of the port is to incorporate the RFID charges in its Scale of Rates.

(ii). In this connection, the MBPT has proposed a rate of ₹ 34/- per RFID tag. The said rate is reported to be purely the cost of RFID tags, which will be levied by the MBPT and passed on to the Contractor engaged by the MBPT to implement the Gate Automation system at the Port. The cost relating to integration of RFID tags with Hardware and Software and the other administrative expenses is proposed to be met by the Port from its own resources.

(iii). From the documents furnished by the MBPT, it is seen that the base cost for each of the RFID Tag is ₹ 28/- and with inclusion of Octroi charges at 5.5% and VAT at 12.5%, the cost of RFID tag has been rounded off by MBPT at ₹ 34/- per tag. Generally, the tariff approved by this Authority is exclusive of any taxes and statutory duties. The taxes and statutory duties are to be levied by the Port at the applicable rates on the tariff so approved by this Authority. However, in the case in reference, the MBPT has confirmed that the component of taxes in the proposed RFID charges will not undergo any change even if there is any change in the tax structure as per the Goods and Service Tax (GST).

(iv). In view of the above confirmation from the port and since the proposal of the port has the approval of its Board of Trustees and there being no objections from any of the users/ user organisations, this Authority is inclined to approve the RFID charges at ₹ 34/- per tag, as proposed by the Port.

(v). Levy of any new tariff would result in additional revenue to the port, which may not have been anticipated during the general revision of tariff of MBPT in June 2016. However, since the cost of RFID tags is reported to be levied by the MBPT and passed on to the Contractor, the question of any additional income accruing to MBPT on account of levy of these charges does not arise.

(vi). Levy of any charges by the Port which are covered by Section 48 of the Major Port Trusts Act, 1963, requires approval of this Authority. From the proposal filed by the MBPT, it is seen that the MBPT has already commenced levy of RFID charges with effect from 14 March 2017 by way of issue of a Trade Circular much prior to filing its proposal in May 2017. Thus, the MBPT has sought approval to the proposed amendment with effect from 14 March 2017 presenting a fait accompli situation to this Authority. It is not unreasonable to expect a port to take advance action for modification of tariff or introduction of any new rates instead of presenting fait accompli situation before this Authority. The working guidelines provide for filing of the proposal for notification of rate for use of a new facility or a new service and levy of proposed rates on adhoc manner simultaneously.

(vii). 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, there is no objection from the users with regard to retrospective effect from 14 March 2017. In view of this position, this Authority is inclined to grant approval for retrospective levy of RFID charges with effect from 14 March 2017. 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 for incorporation of following new Section 9.6 under Chapter IX - Miscellaneous Charges in the existing Scale of Rates of MBPT.

"9.6 Charges for Issue of RFID Tags

All types of vehicles like cargo vehicles, cargo handling equipment, contractors' vehicles (material), passenger vehicles (car, etc.) will be levied RFID tag charges @ ₹34/- per vehicle.

In case of loss or damage of RFID tags, the same shall be issued on recovery of RFID Tags charges @ ₹34/- per vehicle.

The vehicles of MBPT employees will be exempted from levy of RFID charges.**"**

8.2 The MBPT is advised to suitably incorporate the above provision in its Scale of Rates.

8.3. The said charge is deemed to have come into effect from 14 March 2017 and its validity shall remain co-terminus to the validity of the existing Scale of Rates of MBPT upto 31 March 2019.

(T.S. Balasubramanian)
Member (Finance)

SUMMARY OF THE ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY.

F. No.TAMP/44/2017- MBPT - Proposal received from Mumbai Port Trust (MBPT) for incorporation of RFID Tags charges in the SOR of MBPT.

A joint hearing on the case in reference was held on 20 June 2017 at the office of the Authority in Mumbai. At the joint hearing, the MBPT has made its following submissions.

Mumbai Port Trust (MBPT)

(i). The MBPT has implemented RFID as a process of automation of vehicle registration module. This initiative is a part of ease of doing business. It will be applicable on all cargo vehicles and passenger vehicles.

(ii). The MBPT has awarded a contract to M/s Wipro Ltd to implement the RFID system at the Port.

(iii). As a process of gate automation, it has been decided to issue one time RFID Tags to all the vehicles entering into the dock w.e.f.14 March 2017.

(iv). The proposed RFID project will facilitate the port to monitor the vehicle entering the docks with complete track of movement, overstayal and cargo details etc.

(v). The base cost of RFID tag is ₹.28/- per tag and with inclusion of taxes viz. Octroi at 5.5% and VAT at 12.5%, the cost of RFID tag works out to ₹.34/- per tag.

(vi). With regard to the query raised by TAMP in its letter about basis for the base rate of RFID tag at ₹.28/-, it is stated that there is no separate breakup for the cost. It is purely the cost of tags.

(vii). The MBPT proposes to recover the expenditure of RFID tags on cost to cost basis, as such no additional revenue is envisaged from the levy of the said charges.

(viii). The MBPT has incurred an additional cost at around ₹.20 lakhs towards integration of RFID tags with Hardware and Software, which is not included in the cost of RFID. The said cost is proposed to be met from the port's own resources. We are also not charging any administrative expenses.

(ix). With regard to TAMP's query on the date from which the approval for RFID charges is sought, it is to state that MBPT introduced these charge from 14 March 2017 for early implementation, with the Board's approval. We request TAMP to approve the rates with effect from 14 March 2017.

(x). The proposed RFID charges at ₹.34/- are inclusive of taxes and the same amount will be passed on to the Contractor. The component of taxes in the proposed RFID charges will not undergo any change even if there is any change in the tax structure as per the GST. Hence, we request TAMP to approve ₹.34/- as such towards RFID charges

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