(Published in Part - III Section 4 of the Gazette of India, Extraordinary)

TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 46 **New Delhi,** **03 February 2018**

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 amendment to a note relating to Port Lighterage Anchorage (PLA) area with new extended co-ordinates of port limits, as a modification to its existing Scale of Rates approved vide Order No.TAMP/78/2015-MBPT dated 21 June 2016, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports

Case No. TAMP/5/2018-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 19th day of January 2018)

This case relates to the proposal received from Mumbai Port Trust (MBPT) for amendment to a note relating to Port Lighterage Anchorage (PLA) area with new extended co-ordinates of port limits, as a modification to its existing Scale of Rates approved vide Order No.TAMP/78/2015-MBPT dated 21 June 2016.

2. This Authority vide its Order No. TAMP/78/2015-MBPT dated 21 June 2016 has approved the Scale of Rates of MBPT. Vide the said Order, the following note has been prescribed under section 2.15(A) – Schedule of Anchorage charges under Chapter – II – Vessel Related Charges:

"Note: Port Lighterage Anchorage area encompasses the following co-ordinates:

Point 'A'- Latitude 18^0 57' N Longitude 72^0 41' E
Point 'B'- Latitude 18^0 55' N Longitude 72^0 41' E
Point 'C'- Latitude 18^0 55' N Longitude 72^0 43.5' E
Point 'D'- Latitude 18^0 55' N Longitude 72^0 43.5' E

3.1. In this backdrop, the MBPT has submitted a proposal to replace the note below the schedule 2.15 (A) by the new extended co-ordinates of port limits. The main points made by the MBPT in its proposal are summarized below:

(i). The Board by TR no. 68 dated 28.09.2016 accorded sanction to the proposal of extension of existing MBPT Port limits westward and the Ministry was informed vide letter dated 24.10.2016. Accordingly, the Ministry of Shipping vide Gazette Notification No. 1170 dated 20.04.2017 has issued a notification extending port limit of Mumbai thereby extending it further westward and has published the same in the official Extra Ordinary Gazette Part-II Section-3 Sub Section (ii) dated 20.04.2017.

(ii). All concerned and all Port Users were informed vide circular dated 03 June 2017 that vessels entering the extended port limit for carrying out any operations shall be liable to pay all port charges as applicable under the Port Scale of Rates with effect from 27.04.2017.

(iii). Since the existing port limits have been extended, Port Lighterage Anchorage (PLA) area is to be extended upto the new westward port limit. Thus PLA will be bound by following co-ordinates:

Point 'A'- Latitude 18^0 57' N Longitude 72^0 37' E
Point 'B'- Latitude 18^0 55' N Longitude 72^0 37' E
Point 'C'- Latitude 18^0 55' N Longitude 72^0 43.5' E
Point 'D'- Latitude 18^0 57' N Longitude 72^0 43.5' E

(iv). It is proposed to replace the Note below 2.15 (A) by the above revised co-ordinates. It is also proposed to levy all port charges as applicable under the Scale of Rates of MBPT to the vessels which carry out cargo operations at the extended port area.

3.2. The MBPT has furnished the following documents along with the proposal:

(i). MBPT Board Resolution No. 68 of 28.09.2016.
(ii). Copy of Government Notification of Extended Port Limit dated 20.04.2017.
(iii). Map of Extended Port Limit.
(iv). Copy of Trade Circular dated 03.06.2017 issued by MBPT.

4. With reference to the totality of the information received from the MBPT, the following position emerges:

(i). It is seen from the copy of the proceedings relating to the Meeting of the Board of Trustees of Mumbai Port Trust (MBPT) furnished by MBPT along with its proposal, that the size of the vessels that call MBPT for stream operation has increased over a period of few years. The current trend is to move the cargo in bigger vessels so as to achieve economy of scale and reduce transportation cost. Such vessels are reported to have a draft of about 20 Meters. Since the present depth available at Port Lighterage Anchorage is not sufficient for such vessels to call at Mumbai Port for Lighterage operation, the MBPT has felt the need to extend the port limit where the average depth of about 21.5 meters will be available. In this backdrop, the MBPT has decided to extend the port limit.

(ii). Based on the approval of Board of Trustees of MBPT, the Ministry of Shipping (MOS) has approved the revised co-ordinates of port limits of MBPT and has notified it in the Gazette of India vide notification no. 1170 dated 27 April 2017. Consequently, the MBPT has approached this Authority with a proposal to replace the existing co-ordinates of Port Lighterage Anchorage (PLA) area as prescribed in its existing Scale of Rates, with the revised co-ordinates approved and notified by the MOS. A comparative position of the co-ordinates as per existing SOR and revised co-ordinates as proposed by MBPT is tabulated below:

	As per Existing SOR		**Proposed as per the MOS Approval**	
Point A	Latitude 18^0 57' N	Longitude 72^0 41' E	Latitude 18^0 57' N	**Longitude 72^0 37' E**
Point B	Latitude 18^0 55' N	Longitude 72^0 41' E	Latitude 18^0 55' N	**Longitude 72^0 37' E**
Point C	Latitude 18^0 55' N	Longitude 72^0 41' E	Latitude 18^0 55' N	**Longitude 72^0 43.5' E**
Point D	Latitude 18^0 57' N	Longitude 72^0 41' E	Latitude 18^0 57' N	**Longitude 72^0 43.5' E**

(iii). Clause 5.4 of the Tariff Policy, 2015 stipulates that in case there are no objections from users for a proposal or a case, this Authority need not organize any joint hearing. In the instant case, the MBPT has issued the trade circular dated 03 June 2017 intimating concerned port users with regard to Extension of Port's Limits of MBPT and informing the concerned users to note that vessels entering the extended Port's limit for carrying out any operations shall be liable to pay all Port Charges as applicable under the Port Scale of Rates. The MBPT has not reported about any user objecting to the said circular even after passage of 7 months i.e. from the date of issue of circular. Even we are not in receipt of any communication from any of the users / user organisations objecting to the extension of port limits and the applicability of the Port Scale of Rates to the extended limits. Since there is no objection from any of the users/ user organisations, it is felt that no consultative process is necessary in the case in reference.

(iv). It is relevant to mention here that the Port has not furnished about the revenue impact on the Annual Revenue Requirement (ARR) considered in approving the existing SOR vide Order dated 21 June 2016 of the Port arising on account of extension of port limits and levy of the Port Scale of Rates in the extended port limits. The proposed amendment would involve some financial implication, as MBPT may earn additional revenue on account of levy of the Anchoarge Fee to the vessels which carry out cargo operations at the extended port limit. Since the said

additional income to be earned by MBPT from the proposal had not been anticipated and factored while deciding the general revision of SOR of MBPT decided in 2016, there may be a view that some other rate should be adjusted to maintain revenue neutral position. In this regard, it is relevant here to mention that the question of ensuring a revenue neutral position arises when a port has already been given tariff whatever is due to it, to cover the ARR and thereafter it is to be again granted a new tariff. However, in the case of MBPT, it is relevant to recall that in the Order relating to the MBPT general revision case disposed in June 2016, as against the Ceiling Indexed Annual Revenue Requirement (ARR) of ₹.1572.19 crores, the Revenue Estimation at the proposed level of tariff as worked out by MBPT was only ₹.1306.64 crores, thereby leaving a revenue gap of ₹.265.55 crores left uncovered by the Port. Therefore, the anticipated additional revenue to be generated on account of the proposal in reference during the remaining tariff cycle may be subsumed in the revenue gap. Therefore, the question of adjustment in some other rate to maintain revenue neutral position does not arise.

(v). Given that the Ministry of Shipping has approved the extended port limits westwards and the proposal of the MBPT has the approval of its Board of Trustees and since no objections have been received from any users / user organisations even after a lapse of 7 months from the day of issue of Trade Circular by MBPT intimating about notification of change in port limits, this Authority is inclined to accord approval to the proposal of the MBPT.

(vi). Levy of charges or modification to the conditionalities governing the application of charges for the services listed under Section 48 of the Major Port Trusts Act, 1963, requires approval of this Authority. From the submissions made by MBPT it is noticed that the MBPT, after notification of the extended Port Limits by the MOS, has already implemented the rates at the extended port limit of MBPT with effect from 27 April 2017 by way of issue of a Trade Circular much prior to filing its proposal on 05 January 2018. Thus, the MBPT has sought approval to the proposed amendment with effect from 27 April 2017 presenting a fait accompli situation to this Authority. It is not unreasonable to expect a port to take immediate timely action to seek approval of this Authority for modification of tariff or modification to the conditionalities prescribed in the Scale of Rates.

(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 for the Trade Circular implemented with effect from 27 April 2017. In view of this position, this Authority is inclined to grant approval for amendment to note relating Port Lighterage Anchorage (PLA) area with new extended co-ordinates of port limits and to implement the rates at extended port area with effect from 27 April 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.

5.1. 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 note under Schedule 2.15 (A) – Schedule of Anchorage charges under Chapter II with the following :

"Note: Port Lighterage Anchorage area encompasses the following co-ordinates :

Point A	Latitude 18^0 57' N	Longitude 72^0 37' E
Point B	Latitude 18^0 55' N	Longitude 72^0 37' E
Point C	Latitude 18^0 55' N	Longitude 72^0 43.5' E
Point D	Latitude 18^0 57' N	Longitude 72^0 43.5' E

"

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

5.3. The said amendment to the note is deemed to have come into effect from 27 April 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)