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Tariff Authority for Major Ports

G.No. 450

New Delhi,

08 October 2021

NOTIFICATION

In exercise of the powers conferred under Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the application received from Mumbai Port Trust (MBPT) for amendment of the formula prescribed at Note No.4 (i) of Scale of Rates approved for computation of way leave fees in the Order No. TAMP/62/2019-MBPT dated 08 September 2020 approved by this Authority, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/62/2019-MBPT

The Mumbai Port Trust

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Applicant

QUORUM

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. Sunil Kumar Singh, Member (Economic)

ORDER

(Passed on this 15th day of September, 2021)

This case relates to application received from Mumbai Port Trust (MBPT) for amendment of the formula prescribed at Note No.4 (i) of the Scale of Rates approved for computation of way leave fees in the Order No. TAMP/62/2019-MBPT dated 08 September 2020 relating to Schedule of Rates for Special Way Leave charges of MBPT approved by this Authority.

2. This Authority vide its order No. TAMP/62/2019-MBPT dated 8 September 2020 has disposed of the proposal received from MBPT approving Special Way Leave charges for MBPT. The said Order has been notified in the Gazette of India Extraordinary (Part III Section 4) on 6 October 2020 vide Gazette No. 416. The same has been communicated to MBPT and the concerned users / user organizations vide our letter dated 8 October 2020

3. The MBPT vide its letter No.FA/OEA-L/21(90)/Gen/148 dated 22 July 2021 has filed an application requesting for review of the order No. TAMP/62/2019-MBPT dated 08 September 2020 seeking amendment of the formula prescribed as Note 4 (i) at para 10 of the Order, for computation of way leave fees.

4.1. The submissions made by the MBPT in its review application dated 22 July 2021 are given below:

- (i). In the said order, the TAMP has not considered MBPTs policy and practice and formula used for computation of way leave fees, to add 600 mm buffer space, subject to minimum of 1 meter width of trench for calculating area of way leave fees where diameter of pipeline including insulation is less than 1 meter.
- (ii). As per para 2.4 of Trustees Resolution No.138 of 2009, the formula is as follows:

W.L. fee per month on land :-

Length of Pipeline x (External diameter including insulation + 600 mm) x Rate applicable.
1000 mm

(Subject to minimum width of 1 meter)

- (iii) The above formula for computation of special way charges is used by the Board since last several years. Special Way Leave fee is being charged based on length and diameter of the pipeline plus adding 600mm buffer space and the minimum diameter being considered as 1 metre.
- (iv) The Board's calculation is based on Annexure of Trustees Resolution No.540 of 1994 which indicates the same formula. (The MBPT has furnished a copy of the said TR). It is pertinent to note that all the parties having way leave occupations on MBPT land since past several years were aware of this formula and they have been also paying the same without any dispute.

- (v) In terms of PGLM 2015 and clarifications issued by MOS, GOI on the same date, each board is authorized to frame their own policy for fixation of SOR and special way leave charges for Right of way occupations for commercial business purpose. The said PGLM 2015 policy or subsequent clarifications does not prescribe any method of computation of special way leave charges and there is no prohibition in prescribing any formula for computation of such charges and each board of the Major port is authorized to frame such policy and lay down SOR rates for such right of way occupations.
- (vi) Board vide TR No.109 of 2019 accorded approval to the revision of the special way leave fee *inter alia*, for the period from 01.10.2012 to 30.09.2017 on land for cargo related way leave permissions, based on 6% return on land values as per Stamp Duty Ready Reckoner 2012 with the formula for calculation of way leave fee being as mentioned above.
- (vii). There was also a provision that in case the existing special way leave fee being charged is more than the special way leave on account of revision, then the existing special way leave fee would be continued to be charged with 4% annual increase.
- (viii). Regarding TAMP's above observation that rentals as proposed by MBPT for all the areas as on 01.10.2012 is higher than the existing rentals as on 01.10.2012, it is stated that calculation of Special Way Leave Fees furnished in the comparative statement along with MbPT's proposal for revision of Special Way Leave Fee were based on the formula followed by MBPT for several years and various notes to draft SoR proposed by MBPT.
- (ix). The Over Ground way leave passes through 7.45 Hectares and Under Ground way leave pass through 10.18 Hectares of MBPT land. The aggregate area about 17.64 Hectares of prime MBPT land under way leave occupations, which cannot be put to any other commercial use. Therefore, full potential of the land remains unutilized thereby restricting returns on MbPT land. The buffer zone of 300 mm on each side is very essential as highly inflammable Petroleum products / inflammatory gases / poisonous gases etc. are flowing in the said pipelines and any damage to these pipelines will result in major catastrophe in the Urban area of Mumbai city.
- (x). Further, if no buffer zone is provided, then while undertaking the construction activity by way of pile foundation / excavation work, it can cause damage to these pipelines. Therefore, it is utmost necessary to keep 300 mm buffer zone on each side, as per formula mentioned in para above. As you aware, the value of land in Mumbai City is very high and precious, it cannot be compared with the other port land. Resultantly, MBPT is thus deprived of its full economic return on huge land affected by grant of existing way leave permission.
- (xi) The very purpose of periodical revisions in rates is to offset rising costs on account of salaries and wages, material, maintenance, etc. and inflation. Keeping this in view, MBPT Board had consciously taken decision that if "prevalent way leave fee is higher than the revised rate, the higher prevalent rate will be continued with 4% increase p.a."
- (xii). It can be observed from para 9 (vi) (b) of the order dated 8.09.2020 that LAC chose to adopt land rates as per Stamp Duty Ready Reckoner which is lesser than the actual commercial value of land and highest of the five factors prescribed in PGLM. Thus, purpose of revision is not profiteering but to offset rising cost and get return on land area of MBPT and at the same time benefit to the stakeholders.

- (xiii). As per the MBPT policy, the bill amount for five years works out to ₹.110.43 cr and as per TAMP order dated 8.09.2020 bill amount works out to ₹.92.04 cr. resulting in loss of revenue to the tune of ₹.18.39 cr. (The MBPT has furnished a comparative statement showing a details of the amount worked out as per the MBPT policy and TAMP order dated 08.09.2020 in respect of the area). It is not resulting in revenue gain to MBPT.
- (xiv). In terms of Annexure of PGLM 2014/15 clause No. 6 state that “Each Port Trust Board would formulate and approve their own policy for one-time supervision charges. MGT and additional compensation charges, **if any**, for granting way leave permission”. Thus, the port is within its right to frame its own policy. This particular formula mentioned above comes in this ambit.

4.2. In view of the above, the MBPT has requested to amend the formula prescribed at Note 4 (i) of para 10 for computation of way leave fees in the Schedule of Rates for Special Way Leave charges of MBPT approved by this Authority vide its order No. TAMP/62/2019-MBPT dated 08 September 2020.

5. With reference to the submissions made by MBPT vide its letter dated 22 July 2020, the following position emerges:

- (i). Reference is drawn to para no. 9(xi) of the Order no. TAMP/62/2019-MBPT dated 8 September 2020 passed by this Authority disposing of the proposal filed by MBPT for approval of schedule of rates for special way leave charges of MBPT, which is reproduced below:

“The MBPT is seen to have proposed a note to the effect that for the purpose of Right of way leave charges, the area occupied by pipelines, other than those of trestle, shall be calculated based on width (subject to minimum of 1 meter) and length of those pipelines. In this regard, the MBPT has taken a view that since as per the current practice being followed by MBPT, a minimum distance of 300 mm is taken on both sides of pipeline for safety purposes, a minimum land width of 1 meter is necessary for calculating Way leave fees. A formula in this regard has been proposed by the port as one of the notes.

Many of the users viz., All India Liquid Bulk Importers and Exporters Association (AILBIEA), ALL, HPCL, BPCL, Indian Oil Corporation Limited (IOCL) and RIL have objected to the proposed note and have requested that the special way leave rates is charged only on the actual area of the pipelines rather than fixing a minimum width of 1 meter. It is appropriate that the users are not made to pay for the area not used by them.

Though for safety reasons and for repairs purposes, the MBPT wants to maintain a minimum distance of 300 mm on both sides and claim way leave charges on a minimum of 1 meter width of pipelines as per the ‘Practice’ followed by MBPT in the past, the provision of Land Policy Guidelines stipulates that for the purpose of Right of way leave charges, only the area occupied by the pipelines shall be calculated based on the diameter and length of those pipelines. The practice followed by MBPT does not conform to the provisions of Land Policy Guidelines. Also, even in the Rent Schedule prescribing rentals for the properties of other Major Port Trusts also, Way Leave Charges are prescribed based on the diameter and length of the pipelines. In such a scenario, it is not felt appropriate to prescribe the note proposed by MBPT. The note proposed by the port is modified to the effect that no minimum width of 1 meter is prescribed. The formula proposed by the port is also modified to reflect this change.”

- (ii). A comparative position of the formula for computation of Way Leave fee as proposed by the MBPT in its proposal dated 13 December 2019 and as modified by this Authority in view of the analysis made at para no. 9(xi) of the Order dated 8 September 2020 is given below.

As proposed by MBPT:

$$\text{W.L.Fee per month on land} = \text{length of pipeline} \times \frac{(\text{External dia incl. insulation} + 600 \text{ mm})}{1000\text{mm}} \times \text{Rate applicable}$$

(Subject to minimum width of 1 mtr)

As Modified by this Authority:

$$\text{W.L.Fee per month on land} = \text{length of pipeline} \times \frac{\text{External dia incl. insulation}}{1000\text{mm}} \times \text{Rate applicable}$$

- (iii). Thus, for the reasons as brought out above, the formula with regard to computation of way leave charges, as proposed by MBPT, was modified to the effect of deletion of 600 mm over the external diameter including insulation and deletion of sentence “subject to minimum width of 1 meter”.

- (iv). It is recalled that during the consultation process undertaken in connection with the disposal of the tariff Order of September 2020, many of the users viz., All India Liquid Bulk Importers and Exporters Association (AILBIEA), ALL, HPCL, BPCL, Indian Oil Corporation Limited (IOCL) and RIL had objected to the proposed formula of computation of way leave fees and had requested that the special way leave rates be charged only on the actual area of the pipelines rather than fixing a minimum width of 1 meter. In this regard, the MBPT had then countered the objection made by the users by stating that a minimum distance of 300 mm is taken on both sides of pipeline for calculating the Special way leave fees, keeping in view the safety, repairs and maintenance of pipelines.

- (v). The MBPT has stated that the Land Policy Guidelines of 2015 do not prescribe any method of computation of special way leave charges and that each of the Port Trust is authorized to prescribe any formula for computation of special way leave charges and that as such there is no prohibition on part of the port to come up with a formula as proposed by it earlier, for levy of charges for way leave occupations.

In this regard, it is true that Land Policy Guidelines of 2015 does not prescribe any method for computation of special way leave charges. However, the Broad Terms and Conditions for issuance of Right of way Permission for laying Pipelines/ conveyors etc., forming part of the Land Policy Guidelines only stipulates that for the purpose of Right of way leave charges, the area occupied by pipelines shall be calculated based on the diameter and length of those pipelines. Further, each Port Trust Board has been empowered by the Land Policy Guidelines to formulate and approve their own policy only as regards one time supervision charges, MGT and additional compensation charges if any, for granting way leave permission.

- (vi). Now, the port has stated that the formula for computation of special way leave charges with a minimum measure of 300 mm taken on both sides of pipeline for safety purposes has been in vogue at MBPT since the year 1994 and that all the way leave occupants of MBPT were aware of the formula adopted of considering additional distance of 300 mm on both sides of pipeline as a buffer area by MBPT

and have paid the way leave charges as per the then prevailing formula without any dispute.

The Port has also given added justification that the buffer area of 300 mm on both sides of the pipelines is essential as the pipelines generally carry highly inflammable Petroleum products/ inflammatory gases/ poisonous gases etc. and as such, any damage to these pipelines will result in major catastrophe in a highly populated city of Mumbai. The buffer zone is reported to avoid damage to the pipelines while undertaking the construction activity by way of pile foundation/ excavation work.

The port has also stated that exclusion of buffer area of 300 mm on both sides of pipeline in the calculation of way leave charges deprives the port of receiving any remuneration on such excluded area, as the said buffer area cannot be put for any other use by the port.

The MBPT has also categorically stated that the way leave charges approved by this Authority vide its Order dated 8 September 2020 was for the period 10.12.2012 to 30.09.2017 and that levy of way leave charges based on the above said formula as approved by this Authority would result in a revenue loss of ₹ 18.39 crores to MBPT over a period of five years.

- (vii). Based on the additional justifications as furnished by the port now, as brought out above and based on a specific request made by MBPT for review of the note and considering the position that the formula proposed by the port was with reference to the period from 2012 to 2017 and that the way leave occupants have already paid in the past based on the formula as proposed by the MBPT then, without any demur, this Authority is inclined to accede to the request made by MBPT to replace the existing note with regard to the formula for levy of way leave charges by including the buffer area and the minimum width.

6.1. In the result, and for the reasons give above, and based on the collective application of mind, this Authority approves to replace the formula for computation of the way leave charges as prescribed at Note no. 4 (i) of para 10 in the order relating to Schedule of Rates for Special Way Leave charges of MBPT, as given below:

“

4. Formula for calculation of W.L.Fee

$$\text{W.L.Fee per month on land} = \frac{\text{length of pipeline} \times (\text{External dia incl. insulation} + 600 \text{ mm})}{1000\text{mm}} \times \text{Rate applicable}$$

(Subject to minimum width of 1 mtr) ”

6.2. The MBPT is advised to amend its Schedule of Rates for Special Way Leave charges of MBPT accordingly.

(T.S. Balasubramanian)
Member (Finance)