

CHAPTER XIII : MINISTRY OF SHIPPING -PORTS WING

Chennai Port Trust

13.1 Short collection of vessel-related charges

Irregular adoption of reduced gross tonnage for levy of vessel related charges resulted in short recovery of Rs. 4.58 crore. An amount of Rs. 3.25 crore was recovered at the instance of audit.

The 'Scale of Rates' applicable to Chennai Port Trust (ChPT) provided that the vessel related charges (port dues, pilotage fees and berth hire charges) shall be levied on the basis of Gross Registered Tonnage (GRT) of the vessels. An amendment to the Major Port Trusts Act, 1963, made the newly constituted 'Tariff Authority for Major Ports' (TAMP), the authority responsible for approving any revision in the scale of rates with effect from April 1997.

In November 1993, the International Maritime Organisation (IMO) adopted a resolution (a) emphasising the urgent need for promoting the use of oil tankers with segregated ballast tanks in order to reduce the risk of oil pollution and (b) recommending that tonnage based fees in respect of such oil tankers be based on reduced gross tonnage (RGT)*. Based on this, the Director General of Shipping (DGS) in his circular dated 6 August 1999 advised all concerned, including Chennai Port Trust, that the International Tonnage Certificate of such vessels should also indicate their RGT and this be used for calculating tonnage based fee.

In April 2000, based on the proposal of Paradip Port Trust, TAMP directed all major ports to introduce appropriate changes in their scale of rates for levy of "port dues" with reference to the RGT.

Audit ascertained that even before obtaining the approval of TAMP, ChPT adopted (August 1999) RGT as a basis for levying all vessel related charges as well. Hence, the ChPT incorrectly interpreted the scope of the concession to include pilotage fees and berth hire charges. Further, these concessions were given effect from an incorrect date. In response to an audit query (February 2002), the Chairman, ChPT stated (April 2002) that India was a signatory to the resolution of the IMO, hence there was no option but to abide by the

* Calculated by reducing from GRT the total tonnage of tanks used exclusively for carriage of segregated water ballast.

IMO's resolution and the directives of DGS. However, Audit noted that the Port Trust discontinued the application of RGT for collection of pilotage fees and berth hire charges from July 2002. Subsequently, in October 2002, TAMP, after obtaining the views of all major ports ordered that RGT of oil tankers with segregated ballast would continue to be applied for the purpose of levying port dues only. As the provisions of the Act clearly stipulate the approval of TAMP for any change in the scale of rates before adoption, the contention of the Chairman (April 2004) is untenable.

The combined effect of these irregularities led to short-recovery of Rs. 4.58 crore for the period August 1999 to July 2002.

Chennai Port Trust replied (November 2003 and June 2004) that Rs. 3.25 crore had been recovered and out of the balance of Rs. 1.33 crore, Rs. 1.25 crore was pending due to a stay obtained by the concerned parties from the High Court.

The matter was referred to the Ministry in August 2004; its reply was awaited as of December 2004.

Kolkata Port Trust

13.2 Infertuous expenditure

The Port Trust's ill-considered decision to repair a vessel which had outlived its useful life led to infertuous expenditure of Rs. 5.83 crore.

RSV Tribeni, a river survey vessel of the Kolkata Port Trust, was built in 1965 at a cost of Rs 1.10 crore. It was laid up in January 1998 for annual survey repair. As the vessel had already exhausted its economic service life in 1995, it was decided in a Board Meeting held in March 1998 to replace RSV Tribeni with one large craft.

However, in June 1998, the Port Trust also felt that the services of RSV Tribeni would be utilized for undertaking survey operations at lower reaches till a new survey vessel/launch was procured and decided to repair the vessel within the shortest possible time. The Port Trust estimated that the vessel would work for one year after survey repair.

The repair work was awarded to Hoogly Dock and Port Engineers Limited (HDPE) in November 1998 at a total cost of Rs. 1.24 crore. The work was scheduled to be completed in 120 days from the date of placement of the order or placement of the vessel in dry dock, whichever was later. Though the work

order was placed in November 1998, the vessel could actually be placed in dry dock only in June 1999, because of other priority vessels. However, HDPE failed to repair the vessel even within 180 days from the date of drydocking and the vessel again had to be taken out of dry dock in December 1999 to accommodate another vessel. It was placed in dry dock once again in February 2000 and after repair the vessel was commissioned in December 2000. The total value of work done by HDPE was Rs. 97.28 lakh. The Port Trust imposed liquidated damages amounting Rs. 9.73 lakh on the firm for delay in completion of the work.

After commissioning, the vessel could work for only 14 days till April 2002, due to various technical problems. During its inoperative period, the survey commitments of RSV Tribeni were fulfilled by two launches procured by Port Trust in August and November 1999 and hired launches of other operational points of Marine Department. Meanwhile one survey vessel M.V. Sarojini was also delivered in April 2001. Thus, RSV Tribeni which was uneconomical to maintain and operate became surplus to requirement and Director, Marine Department, proposed (December 2001) its disposal. The Port Trust finally condemned the vessel in April 2002.

The vessel was disposed of in September 2003 for Rs. 79.50 lakh. Meanwhile the Port Trust incurred an expenditure of Rs. 5.83 crore from February 1998 to May 2002, on the crew members of RSV Tribeni, towards payment of salary, wages and other incidental charges, including the cost of repair of the vessel. The expenditure incurred did not yield any material benefit because the vessel could be utilized for only 14 days against its expected service life of one year after repairs. Further, during the period it was not in operation, the survey requirements were fulfilled by other vessels. Thus, the Port Trust's decision to repair RSV Tribeni, which had outlived its economic life was imprudent.

The Port Trust stated (September 2004) that the crew members of the vessel were gainfully utilised in other craft/launches/survey stations of Marine department, barring a skeleton staff engaged in ship keeping duty, hence the expenditure incurred was not infructuous. This reply is not tenable, as the Port Trust could not furnish any documentary evidence or administrative orders in support of such utilisation of crew members.

The matter was referred to the Ministry in July 2004; its reply was awaited as of December 2004.

Mormugao Port Trust

13.3 Infertuous expenditure on pay & allowances of crane drivers

Delay in redeployment of redundant staff resulted in infertuous expenditure of Rs. 99.83 lakh.

The Mormugao Port Trust (MPT) had condemned five wharf cranes and put them up for disposal in October 1997. Audit ascertained (August 2003) that though the cranes were decommissioned, sufficient efforts were not made to redeploy the crane drivers who continued to draw pay and other allowances without any fruitful work. Out of the 20 surplus crane drivers, 15 retired subsequently and consequent to the audit observation, the remaining five were deployed in the Workshop in April 2004. The expenditure incurred on idle wages to the surplus crane drivers during the period 1998-99 to 2003-04 was Rs. 99.83 lakh.

The Port Trust while accepting the payment of idle wages, replied (July 2004) that the services of the crane drivers could not be utilised elsewhere due to practical problems and as they did not fulfill the qualification criteria, they could not be deployed in the alternative posts.

Thus, by not taking timely action to redeploy the services of the redundant staff, the Port incurred an infertuous expenditure of Rs. 99.83 lakh on idle wages for five years.

The matter was referred to the Ministry in November 2004; its reply was awaited as of December 2004.

Mumbai Port Trust

13.4 Undue benefit of interest to the contractor in premature release of retention money

By releasing retention money of Rs. 3.29 crore before the due date and in relaxation of conditions of contract to provide financial support to the contractor for timely completion of the project, Port afforded undue benefit to the contractor. Interest was recovered at the instance of Audit but at a lower rate. Recovery of interest amounted to Rs. 1.24 crore and undue benefit due to recovery at lower rate of interest amounted to Rs. 15.45 lakh.

M/s Afcons Infrastructure Limited (AFCONS) was awarded contract for modernization of three berths of Marine Oil Terminal at Jawahar Dweep in September 2000 with Government approval at a cost of Rs. 144.44 crore with completion period of 32 months. The contract consisted of Completion of Approach Trestle and Laying Pipelines (Milestone No.1), Demolition & Reconstruction of Jetty Head, Pipe laying, Fire Fighting facilities, etc. in Jetty Heads J3, J2, J1. (Milestones 2,3 &4)

The contract provided for deduction of retention money at 10 *per cent* of amount due in respective currencies from the contractor's interim bills. This retention money was to be released in two instalments, one half after issue of "taking over" certificate and the balance after expiry of the defects liability period.

The aggregate retention money recovered from the contractor's bills for the period upto July 2002 was Rs. 6.59 crore. The progress of work was slow. The contractor attributed (August 2002) it to cash flow problems and requested the Port for the release of the retention money against an unconditional bank guarantee, with promise of timely completion of the project on getting the funds. In order to avoid any delay in completion of the project, the Port (October 2002) agreed to release 50 *per cent* of the retention money immediately and balance after construction and commissioning of one of the three jetties (J3), against bank guarantee. The Port also decided not to deduct retention money from subsequent interim bills and instead to accept bank guarantees in lieu of the same. Accordingly, an amount of Rs. 3.29 crore¹ being 50 *per cent* of retention money was released (Nov. 2002). Before relaxing the relevant conditions in the contract, pursuant to a Trustee

¹ Conversion of US\$ @ Rs. 46.30 based on mean value of dollar from date of release of retention money and present value.

resolution, the Port did not obtain any approval from Government.

Audit noted (January 2003) that the Port's decision of release/non-deduction of the retention money before due dates was contrary to the provision of the contract, and the same afforded undue benefit to the contractor in the form of interest potential on the retention money released. Despite the financial assistance the contractor failed to adhere to the schedule of completion of the project as detailed below:

Milestone	Completion	
	Schedule date	Actual date
Milestone no. 1	15.01.2002	31.03.2003
Milestone no. 2	15.07.2002	12.08.2003
Milestone no. 3	15.12.2002	08.05.2004
Milestone no. 4	15.06.2003	Work in progress (November 2004)

The Port decided (June 2003) not to release further retention money ahead of due dates. The contractor was given the option either to pay back the prematurely released money in three instalments or to retain the money on payment of interest at 10 *per cent per annum* from the date of release. The contractor opted (December 2003) to retain the money by paying interest. Accordingly interest amounting to Rs. 1.24 crore was recovered by the Port for the period from November 2002 to September 2004 from the contractor's bills.

The early release of retention money was justified by the department stating (July 2004) that the same was done with the objective of completion of the balance work within the stipulated time as any delay in completion of the project would have adverse impact on the Port's traffic. It was also stated that the release of the money had helped in improving the progress of the work.

The reply of the Port is not acceptable as the release of retention money was not in conformity with the provisions of the contract and resulted in extension of undue financial benefit to the contractor. As this provision of premature release of funds was not known while inviting the bids, other bidders could not factor it in and the possibility of obtaining better competitive rates was lost. On the contrary, the preferential treatment given to the lowest bidder during the contract did not afford any cost advantage to the Port as the average rate of interest charged by the banks at the time of the decision of the Port (June 2003) was 11.25 *per cent* while the Port levied interest at the rate of 10 *per cent* leading to a differential of Rs. 15.45 lakh upto November 2004. Further, the purpose of releasing the money early was defeated, as the contractor did

not complete the work on time. The remaining work of one of the three Jetties (JI) is expected to be completed in December 2004 nearly 18 months after the original scheduled date of completion June 2003.

The matter was referred to the Ministry in August 2004; its reply was awaited as of December 2004.

Paradip Port Trust

13.5 Loss of Revenue

Failure to realise the expenditure for the removal of the cargo spillage from the port users led to loss of revenue of Rs. 86.49 lakh to the Paradip Port Trust.

According to Rule 28 of Paradip Port Trust (PPT) Rules and Regulations of 1966, if any person or the master or owner of any vessel or the stevedore engaged in loading or unloading of a vessel allows any cargo to fall from any vessel, pier or quay into the harbour waters, he shall take immediate steps to remove the said cargo, from the water. Rule 29 *ibid* further envisages that if such persons fail to remove the cargo, the Deputy Conservator may remove it and any expenses incurred in such removal shall be recovered from the concerned persons without prejudice to any other penalty to which they may be liable. The polluter must pay principle underlies this rule. This is a fundamental principle that governs international law on environment.

Audit ascertained (May 2003) that the Marine Department had undertaken grab dredging of the berth face in PPT between February 2002 and March 2003 for removal of cargo spillage. Cargo spillage of 34,596 metric tonne (MT) was dredged that contained mostly thermal coal and coking coal. Expenditure of Rs. 86.49 lakh was incurred on the dredging. However, the PPT failed to realise this amount from the defaulting port users which resulted in loss of revenue of Rs. 86.49 lakh.

In response, the PPT (July 2003) agreed that any port user/stevedore found to be responsible for dropping cargo into the harbour waters should be penalised.

However, the PPT stated that the amount spent towards berth face dredging could not be recovered owing to the following reasons:

- (i) the polluters were not identifiable;

- (ii) the expenditure incurred on berth face dredging was a part of the total dredging expenditure of the Port Trust; and
- (iii) the present volume of the dredged material was accumulated material of the last 10 years and it was difficult to apportion the cost of dredging among different users.

The reply of the PPT cannot be accepted because the accumulated quantity pertained to the period from February 2002 to March 2003. The other arguments of the PPT are also not tenable because in July 2002, the Deputy Conservator had proposed recovery of the cost of spillage of 18338.8 MT, accumulated upto June 2002 from the stevedores. The charges were proposed to be apportioned in terms of the quantity of cargo handled by them in the previous year. No difficulty about the identification of the stevedores was mentioned in this proposal. The Chairman of PPT had approved this proposal (July 2002). However, no recovery was made for removal of 18338.8 MT of cargo spilled upto June 2002 or for the additional quantity of 16257.2 MT cargo spilled thereafter, upto March 2003.

The matter was referred to the Ministry in August 2004; its reply was awaited as of December 2004.