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DACA AI
Domestic Air Cargo Agents Association

To,
SECRETARY
Airport Economic Regulatory Authority
AERA Building
Administrative Complex
Safdarjung Airport
New Delhi - 110003.

Subject : Consultation Paper No.04/2014-15 dtd. 9.6.2014.

Objections to Annual Tariff Proposal for the year 2014-15 submitted by Delhi Cargo Service Centre Pvt. Ltd. for providing cargo handling services at IGI Airport, New Delhi.

1. This objections to the aforesaid Annual Tariff Proposal for the year 2014-15 submitted by Delhi Cargo Service Centre Pvt. Ltd. (hereafter "DCSC") for providing cargo handling services at IGI Airport, New Delhi are being raised by Domestic Air Cargo Agents Association of India (hereafter "DACA AI").
2. DACA AI is registered under the Societies Registration Act, 1860 and is an association of Shippers/Agents who are carrying on business of transport of Air cargo from one point to another in India. Currently, DACA AI is having 64 members all over India. The members of DACA AI account for about 95% of domestic air cargo in the country and, therefore, is a 'stack holder' within the meaning of S.2(o) Airport Economic Regulatory Authority of India Act, 2008 (hereafter "the Act").
3. At the outset, it is submitted that DACA AI had made representations dated 28.4.2014 and 20.5.2014 which were directed to be considered by the Hon'ble Delhi High Court vide order dated 29.05.2014 along with determination of tariff. DACA AI also requests that the present objections of the DACA AI may also be considered along with the determination of tariff. A true copy of the order dated 29.5.2014 passed by the Hon'ble Delhi High Court is Annexure-1.

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Domestic Air Cargo Agents Association

4. At the outset, DACA AI submits that the present proposal of DCSC is incapable of consideration by this Hon'ble Authority and the Stock Holders in the absence of financials submitted by DCSC including the details of the capital expenditure incurred by DCSC and investment in improvement of cargo handling facilities incurred by DCSC since the year 2010, revenue received from services other than cargo revenue, so on and so forth. In that view of the matter, DACA AI humbly submits that the consideration of present proposal of DCSC may kindly be deferred with directions to DCSC to submit its profit and loss statements and balance sheets from the year 2010 onwards till now.
5. At the outset, DACA AI also submits that in view of the various misrepresentations made by DCSC in the past as detailed hereinafter as well as non-material and non-competitive services rendered by the domestic cargo shippers, the request for DCSC to approve the presently proposed tariff under the light touch approach ought not to be entertained at all.
6. Without prejudice to what is stated above DACA AI submits its objections to the present tariff proposal of DCSC which includes the proposal to levy TSP charges on domestic cargo shippers/agents as under:
 - I. OBJECTION TO TSP ON PRINCIPLE
 - i). DCSC's proposal for levy of Terminal Storage and Processing Charges on Domestic Cargo is wholly misplaced for the simple reason that nowhere in the world, TSP charges are levied by cargo handling agency on domestic cargo. A true copy of the Airway Bill executed in Australia for domestic cargo and supporting communication is **Annexure-2**.
 - ii). Prior to DCSC having been appointed as cargo handling agency, no TSP charges used to be levied on transport of domestic cargo by air. A true copy of the Airway Bill dtd.7.8.2009 is **Annexure-3**.



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-546-

DACAAI
Domestic Air Cargo Agents Association

- iii). DCSC had justified the levy of TSP on domestic cargo at the first instance with reference to the then existing cargo handling rates at International air cargo terminals at Mumbai, New Delhi, Chennai and Bangalore Airports as well as the tariff notified by the Airports Authority of India for export cargo.

In case of international cargo, inspection and clearance by custom authority is necessarily involved. For this reason the international cargo is required to be unloaded and stored at warehouses for at least 24 hours. This requires processing and storage.

On the other hand, in case of domestic cargo no processing or storage is required. In that view of the matter, TSP on domestic cargo is wholly unwarranted.

- iv). In any event, in case of domestic cargo, the shipper has a contract with airlines. Hence, for all practical and legal purposes, once the domestic cargo reaches the cargo terminal, the cargo belongs to the airlines. This is so because in the event of loss/damage to domestic cargo, only the airlines are responsible and not the cargo terminal operator like DCSC. There is no privity between the shipper of domestic cargo and cargo terminal operator. A true copy of the Complaint dated 19.5.2014 made by one of the members of DACAAI as and by way of illustration is **Annexure-4**.

- v). This apart, there is no substantial service being provided by DCSC since the inception. DCSC is operating from make shift terminal even today. There is no infrastructure or manpower for loading or unloading of domestic cargo. The shippers of domestic cargo themselves loading and unloading and getting their cargo security cleared through x-ray machines. True copies of photographs supporting the submission above is **Annexure-5**. True copies of the 5 affidavits of the members of DACAAI is **Annexure-6**.



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-542-

DACAAI
Domestic Air Cargo Agents Association

- vi). Even DCSC has not been able to state in its proposal that apart from alleged loading and unloading facility, which other facility it has been providing to domestic cargo shipper.
- vii). For the aforesaid reasons, the levy of TSP charges on domestic shippers/agents is wholly unjustified when no service is being provided to domestic cargo shipper and especially when DCSC is charging airlines with TSP charge.

NOTE : In the present proposal, the tariff to be levied on airlines DCSC has not used the expression "TSP Charges" but the comparison of breakup of services said to be provided by DCSC to airlines would show that the DCSC is levying TSP charges on the airlines as well.

II. OBJECTION TO TSP ON FINANCIAL GROUNDS.

- i). DCSC has justified its tariff proposed in the year 2010 on the financial projection that its cargo revenue would be Rs.22,37,41,907/- for the period May-2010 to March-2011 and Rs.13,61,28,600/- for the period April - November 2011 and that it would earn profit of Rs.2,50,43,745/- for the Period May-2010 to March-2011 and that it would suffer loss of Rs.2,22,76,900/- for the period April - November 2011.
- ii). The projection of loss for the period April - November 2011 was on the assumption that 30% of domestic business would shift to Brownfield Terminal Operator by April 2011. This projection was proved to be wholly baseless inasmuch as none of the domestic business shifted Brownfield Terminal Operator at least till May 2014. Meaning thereby, DCSC continued to have 100% of domestic business till May 2014.
- iii). The profit and loss statement of DCSC for the period 1.4.2010 to 31.3.2011 reveals that DCSC had concealed from AERA its sources of other income of Rs.13,48,31,380/- generated from the make-shift cargo terminal.



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- iv). The audited balance sheet ended on 31.3.2012 discloses that instead of suffering loss as projected by DCSC for the period April – November 2011, DCSC had in fact made net profit of Rs.2,51,81,315/- .
- v). The balance sheet ended on 31.3.2012 also discloses that DCSC has concealed its sources of income being lease rental revenue of Rs.10,96,13,058/- and Other Income of Rs.15,49,298/- . True copies of profit and loss statement and balance sheets of DCSC for the Financial Years 2010-11 and 2011-12 is **Annexure-7**.
- vi). It is relevant that while making the 2nd annual tariff proposal dated 30.3.2012, DCSC did not disclose its financial accounts to AERA. Similarly, even in the present 3rd annual tariff proposal DCSC has not disclosed its profit and loss statement and balance sheet.
- vii). In view of the non- disclosure of financial details of DCSC for the past years, it is not possible for AERA or any other person to determine the tariff proposed by DCSC inasmuch as S.13 of the AERA Act requires the authority to determine the tariff by taking into consideration the factors specified in that section.
- viii). The volume of transport of domestic cargo from IGI Airport, New Delhi has increased from 1,17,120 tonnes in the year 2010 to 1,47,200 tonnes in the year 2013, meaning thereby the cargo revenue of DCSC has increased significantly.
- ix) It is a fallacy to say that by the introduction of CELEBI, there is a competition between DCSC and CELEBI and that domestic cargo shipper has a choice to avail the services of either of them. This is so because:
- a) An airline has no choice to contract with both cargo terminal operators. Hence, the domestic cargo shipper has to go through the same cargo terminal operator who has a contract with the airline. For example, the Jet Airways has contract with CELEBI. If the domestic cargo shipper wants to transports its cargo through



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Jet Airways, then he has necessarily go through CELEBI and has no choice to go through DCSC.

- b) The tariffs of both CELEBI and DCSC is identical and there is cartelization. In other words, there is no choice or competition in real terms.

III. WITHOUT PREJUDICE TO ABOVE.

- i). The TSP charges on domestic cargo shippers are too high for providing the alleged services of loading and unloading.
- ii) DCSC should not be permitted to levy the minimum charges proposed to be levied by it on domestic cargo shippers/agents as well as on the Airlines inasmuch as the same would unfairly inflate the transport of domestic cargo in the Country without there being any rationale.
- iii) DCSC is collecting TSP charges by forcing the domestic cargo shippers/agents to open pre-deposit accounts. There is no proper method of accounting and members of DACAAI have been wrongly debited. The method of collecting TSP charges is cumbersome. DACAAI craves leave to refer to and reply upon its representation dated 28.4.2014 for highlighting the complications arises out of pre-deposit method of collecting TSP charges adopted by DCSC. A true copy of the invoice issued by DCSC for domestic cargo sent by Air on 13.6.2014 by the company of the President of DACAAI and few airway bills is Annexure-8.

7. In the premises above, DACAAI submits that:

- a) There is no justification for levy of TSP charges on domestic cargo shippers/agents and the proposed levy of TSP charges on domestic cargo shippers/agents should not be approved by this Hon'ble Authority and DCSC should be directed to refund the amounts collected by it from the domestic cargo shippers/agents from the inception.




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- b) Inasmuch as levy of TSP charges was approved on the premise that cargo terminal would be shifted from make-shift terminal to a proper cargo terminal w.e.f. 1.12.2011 and since the cargo terminal continues to be operated from make-shift terminal, DCSC should be directed to refund TSP charges collect by it at least w.e.f. 1.12.2011.

8. In the premises, DACAAI humbly prays that this Hon'ble Authority may kindly:

- a) condone the delay of 2 days in submitting the objections of DACAAI to the Annual Tariff Proposal for the year 2014-15 submitted by DCSC for providing cargo handling services at IGI Airport, New Delhi;
- b) hold that there is no justification for levy of TSP charges on domestic cargo shippers/agents by DCSC on transport domestic cargo by Air;
- c) direct DCSC to refund the amounts collected by it from domestic cargo shippers/agents in the name of TSP charges; and
- d) pass such other and furthers orders as is deem just and appropriate by this Hon'ble Authority in the facts and circumstances of the case.

Submitted by


(ARVIND NAYAK)

President

Domestic Air Cargo Agents Association of India

Dated : 25.06.2014
New Delhi.

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3697/2014**
DOMESTIC AIR CARGO AGENTS AND ORS Petitioner

Through **Mr. Arvind Nigam, Sr. Adv. with
Mr. Jatin Zaveri, Adv.**

versus

**AIRPORTS ECONOMIC REGULATORY
AUTHORITY AND ORS Respondent**

Through **Mr. Rajiv Nanda, Sr. Adv. with
Mr. Naresh Kaushik, Adv. and
Ms. Priyadarshni Gopal, Adv. for R-1
Ms. Anjana Gosain, Adv. for R-2
Mr. Atul Sharma, Adv. Mr. Milanka
Chaudhary, Adv. for R-3**

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN**

ORDER

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29.05.2014

Present writ petition has been filed with the following prayers:

"a) *issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or other directing Respondent No.1 to adjudicate the application-cum-representations dated 28.4.2014 (Annexure P-8) and the application-cum-representation dated 20.5.2014 (Annexure P-11) of the Petitioners with due opportunity to the Petitioners within a time frame;*

b) *Restrain the Respondent No.3 to give effect to its Circular dated 15.4.2014;*

c) *Pending final disposal of the present petition pass an ad-*

attached
[Signature]
29/5/14

**Court Master
High Court of Delhi
New Delhi**

interim order in terms of prayer (b)."

Keeping in view the fact that tariff for the next year is already under preparation by respondent no.1, Regulatory body, this Court disposes of the present writ petition by directing respondent no.1 to expedite the process of determination of tariff in accordance with law. This Court also directs that along with determination of tariff, petitioner's representation shall also be examined/considered.

As far as prayer for stay of the Circular dated 15th April, 2014 is concerned, this Court finds that prayer for the said relief can be made to the Appellate Tribunal under Section 17 (a) (ii) of the Airports Economic Regulatory Authority of India Act, 2008.

It is pertinent to mention that there is no averment in the present petition that urgent mentioning was made before the Registrar, Appellate Tribunal and the same was declined.

Consequently, this Court is of the view that relief for the said prayer should be pressed before the Appellate Tribunal and urgent hearing should be asked for even if the Tribunal is on vacation.

With the aforesaid observations, present writ petition is disposed of.

Dasti under signature of Court Master.

MAY 29, 2014
mg

Checked
Manmohan
29/5/14
Court Master
High Court of Delhi
New Delhi

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MANMOHAN, J