

AIRPORTS ECONOMIC REGULATORY AUTHORITY APPELLATE TRIBUNAL

APPEAL No. 07/2013

(with I.A. No. 11, 29 & 31 of 2013)

(Under Section 18(2) of the Airports Economic Regulatory Authority of India Act, 2008 against the order dated 10.01.2013 passed by the Airports Economic Regulatory Authority of India)

CORAM

**Hon'ble Mr. Justice V.S. Sirpurkar
Chairman**

**Hon'ble Mr. Rahul Sarin
Member**

**Hon'ble Mrs. Pravin Tripathi
Member**

In the matter of :

Express Industry Council of India

...Appellant

V/s.

AERA & Ors. (Esquire Express/MCA)

.... Respondents

Appearances : Mr. Ranjit Walia, Ms. Renuka Singh, kim & Mr. Prathik James,
Advocates for the Appellant.

Mr. Atul Nanda, Sr. Advocate with Mr. Naresh Kaushik, Ms.
Rameeza Hakeem & Mr. Priyadarshi Gopal, Advocates for AERA

Mr. V. Lakshmi Kumaran with Mr. S. Seetharaman and
Mr. T. Sundar Ramanathan, Advocates for R-2
Mr. Pradeep Desouja, Advocate for R-3 (MOCA)

ORDER

15th January, 2014

This appeal is filed by M/s. Express Industry Council of India (hereinafter called the "EICI") against the order of the Airports Economic Regulatory Authority of India (hereinafter called the "AERA") by which the AERA considered the Multi Year Tariff Proposal and the Annual Tariff Proposal submitted by the Esquire Express India Pvt. Ltd. (hereinafter called the "Esquire"). This Multi Year Tariff Proposal was for the years 2011-12 to 2012-13 and 2013-14 for the first control period commencing w.e.f. 1.4.2011 for providing the Common User Express Courier Terminal at Chennai Airport, Chennai. The AERA ultimately decided to adopt light touch approach and finding to that effect is to be found in paragraph 2.3 of the

impugned order. For this, the AERA relied on 3.2 (ii) of the Guidelines where the concerned service is deemed to be a material but competitive and as such the AERA determined the tariff for service provider based on the 'light touch approach'. Though feeble arguments were raised against this light touch approach, we do not find anything wrong on the part of AERA to adopt light touch approach and they were given in paragraph 2.4 of the order.

2. The proposal was pondered over by EICI who raised various objections which the AERA has mentioned in paragraph 3.2 of the order. They being :-

"The current tariff for terminal charges for processing courier shipment proposed by Esquire is Rs. 15 per kg a massive increase (32.31%) from the current rates which is not justified.

.... there is no minimum service standards prescribed and the users find their services trade unfriendly.

...the charges proposed for x-ray screening is no acceptable and is the highest in the country and not acceptable to our members."

... Total profit from X ray screening in excess of Rs. 5 crores per assuming that the cost of the machine maintenance is taken into consideration which does not justified such high cost.

... the slab of 250 MT should be removed and not accepted and a flat per kg rate should be approved after taking other consideration into account to ensure that a high rates is not approved.

... The current proposed as submitted in the proposal should not be acceptable and should be revised and reduced to keep them in conformity with rates at other locations and the Chennai cargo terminal rates based on which the competitive assessment has been done."

3. On the other hand, Esquire had justified the proposal on the following basis :-

"..... We have not revised the rate during the period 2007-2012 whereas

- i. During the five years the rent per square meter payable to AAI has gone up from Rs. 1025/- to 1827 per Sq. Mt. in 2012-13, increased the rent which was Rs. 596804/- per month in 2007-08 are presently at Rs. 1326036/- per month, representing an increase of 122%.*
- ii. The royalty payable to AAI has gone up from 1% in 2007-08 to 3.3% in 2012-13 representing an increase of 230%.*
- iii. The staff cost has gone up by 100% in the last five years.*
- iv. The Customs Cost Recovery charges which was Rs. 3,90,475/- per month in 2007-08 is presently Rs. 9,20,212/- a increase of 135%.*
- v. The import tonnage has come down by 50% in 2011-12 compared to that in 2007-08 and export tonnage is more or less stagnant during 2008-09 to 2011-12.*

4. We have considered the matter in the light of the arguments led by Ms. Renuka Singh who has tried to contend that firstly the increase in the charges itself was not justified at all in view of the recommendation of the Task Force. The learned counsel heavily relies on the recommendation for the Ministry of Civil Aviation which is to the following effect:-

"Issue-1 *Rationalizing charges levied by Airport operators*

Problem : *The compulsory X-Ray charges at Mumbai, Delhi, Chennai express terminals are Rs. 6 per kg. as against Rs. 0.80 per kg. at the Cargo Terminals. The rent charged by private airport operators is also higher than the General Cargo rates without any sound logic behind the discrimination.*

Suggestion : *The Task Force recommends that the rates being charged by the Airport Operators should be rationalized in line with General Cargo Warehouse rates."*

5. The learned counsel Shri V. Lakshmi Kumaran, however, points out that this so called recommendation by the Task force was neither pleaded nor brought before the AERA. Again Shri V. Lakshmi Kumaran points out that in case this report is accepted, then that would be a separate proceeding and a separate appeal. It is pointed out by Shri V. Lakshmi Kumaran that as mentioned earlier the costs of maintenance have gone up heavily. In that Shri V. Lakshmi Kumaran shows that the rent for the space was increased from 1025 per sq. mtr. to 1827 per sq. mtrs. He gives very critical elaboration of the staff cost and points out that the appellant had to incur the additional expenditure of Rs.1,97,25,961/- on account of the salary and the arrears of all the customs officer on cost recovery basis due to the 6th Pay Commission.

6. The AERA had put up this expenditure to EICI and has come to the conclusion that the increase was not substantial at all. Inasmuch as it used to be for year 1.4.2011 to 31.3.2012, it was Rs. 6/- per kg. with minimum of Rs.100/- per flight. For the year 1.4.2012 to 31.3.2013, it increased from Rs. 6/- to Rs. 7.50 per kg. with minimum of Rs. 125/- per flight. While for the year 1.4.2013 to 31.3.2014 it went up by fifty paise and became Rs. 8/- per kg. with minimum of Rs.135/- per

flight. It is pointed out that the earlier tariff was Rs. 6/- for the year 1.4.2011 to 31.3.2012 was in prevalence for good long five years.

7. It is thus pointed out that the increase is of miniscule nature and cannot be viewed as unreasonable increase. We are in agreement with the learned counsel Shri V. Lakshmi Kumaran appearing for Esquire and we are also of the opinion that the increase is almost immaterial.

8. The learned counsel for appellant however, pointed out that there was a recommendation of the Task Force. We clarify that in case that recommendation were to be accepted, this order should not be viewed as an adverse order or adverse comment by this Tribunal. However, we again clarify that in the event the rates are proposed to be slashed, it will be open for Esquire to address all the points against the slashing of the tariff. With these comments we do not see any merits in this appeal and dismiss the appeal. No orders as to costs.

(Justice V.S. Sirpurkar)
Chairman

(Rahul Sarin)
Member

(Pravin Tripathi)
Member