

Distrainment or Arrest and Sale of Vessels Regulations, 1988

**TUTICORIN PORT TRUST (DISTRRAINT OR ARREST AND SALE OF
VESSELS) REGULATIONS, 1988.**

MINISTRY OF SURFACE TRANSPORT

(Ports Wing)

NOTIFICATION

New Delhi, the 19th January, 1989

(Published in the Gazette of India dated 19.1.1989)

G.S.R No. 39 (E) – In exercise of the powers conferred by Sub-section (i) of section 124, read with sub-section (i) of Section 132 of the Major Port Trusts Act, 1962 (38 of 1963), the Central Government hereby approve the Tuticorin Port Trust (Distrainment or Arrest and Sale of Vessels) Regulations, 1988 made by the Board of Trustees of Tuticorin Port in exercise of powers conferred on them by section 123 of the said Act, and published in the Tamil Nadu Government Gazette dated July 6, 1988 and July 13, 1988 and errata notification dt August, 24, 1988 and as set out in the Schedule to this notification.

SCHEDULE

TUTICORIN PORT TRUST

NOTIFICATION

In exercise of the powers conferred by Section 123, read with Section 53 and Section 64 of the Major Port Trusts Act, 1963, (38 of 1963) the Board of Trustees of the Port of Tuticorin hereby makes the following regulations, namely :-

1. Short title and commencement :- (1) These regulations may be called Tuticorin Port Trust (Distraint or Arrest and Sale of Vessels) Regulations, 1988.

2. They shall come into force on the date of publication of the approval of the Central Government in the Official Gazette.

2. Application :- These Regulations shall apply to all vessels in respect of which any rates or penalties or both are payable under the Major Port Trusts Act, 1963 or under any regulations or others made thereunder, but shall not apply to vessels belonging to, or in the service of the Central Government or a State Government or to any vessels of war belonging to any Foreign State.

3. Definitions :- In these regulations, unless the context otherwise requires:-

(i) 'Act' means the Major Port Trusts Act, 1963, (38 of 1963):

(ii) 'DEPUTY CONSERVATOR' means the Officer for the time being in charge of the Marine Department, Tuticorin Port and includes the Deputies and Assistants to the Deputy Conservator and any other officers acting under the authority of the Deputy Conservator.

(iii) 'Form' means the form annexed to these regulations,

(iv) 'Rates' means the rates or penalties payable under the Act.

(v) Words and expressions used in these regulations but not defined and defined in the Act shall have the meanings respectively assigned to them in the Act.

4 Distraint or arrest of vessels :

- (1) Where any vessels in respect of which rates/penalties have not been paid in lying at the Port, a demand in Form 1 shall be made by the Deputy Conservator upon the Master of the defaulting vessels requiring the said Master to pay all the rates or penalties within a period of seven days from the date of issue of the said demand.
- (2) The said demand shall accompany the copy of the bills containing the full particulars of rates or penalties which were raised against the owner or agent of the concerned vessel and payment of which still remain due to the Board.
- (3) The said demand shall be served upon the Master and in the event of non-availability of the Master, the affixing of the demand notice on the mast of the vessel shall be deemed as service of the demand upon the Master.
- (4) If the master of the defaulting vessel refuses or neglects to pay the rates/penalties or any part thereof within the time limit specified in the demand made upon the Master, the Board may proceed to distrain or arrest such vessel and the tackle, apparel and furniture belonging thereto, or any part thereof and detain the same until the amount so due to the Board, together with such further amount as may accrue for any period during which the vessel is under distraint or arrest, is paid.
- (5) In order to distrain or arrest the defaulting vessels, the Deputy Conservator shall issue a warrant of arrest in Form II clearly specifying the amount due and indicating that the amount so due to the Board together with the amount so due to the Board together with further accrual of rates or penalties and cost are paid towards full satisfaction of the Board.
- (6) (a) The warrant of arrest shall be served upon the Master of the vessel and a copy thereof shall also be affixed on the mast of the vessel.

(b) in cases where the Master is not available or avoids service of the warrant, the fixing of the copy of the warrant on the mast of the vessel shall be deemed as service of the warrant upon the master.

- (7) If the said rates/penalties or cost of the distraint or arrest of the vessel or of the keeping of the same are not paid by the owner or master or agent of the vessel towards full satisfaction of the Board within a period of five days next after the distress or arrest has been made, the Board shall cause the vessel or other things so distrained or arrested to be sold.
- (8) In the case of a foreign vessel placed under distraint or arrest by an order, the Embassy of the Flag country and the Government of India in the Ministry of Surface Transport shall also be informed.

5. Sale of distrained or arrested vessel:

- (1) The Deputy conservator shall have a valuation survey of the vessel carried out by approved Surveyors to ascertain the reserve sale price of the distrained vessel.
- (2) The Deputy Conservator shall obtain the permission of the Director General, Shipping before putting the vessel and the tackle, apparel and furniture belonging thereto, to sale.
- (3) The sale shall be held in accordance with the provisions of the Sale of Goods Act, 1930 and also in terms of the conditions of sale as per Tender Notice.
- (4) Sealed tenders shall be invited from the prospective buyers through press advertisement as in Form – II at least in four leading Newspapers, including Hindi and one regional language daily specifying the last date for the receipt of tenders.
- (5) The prospective buyers shall be permitted to inspect the vessel after the sale notice is published in the Press, during a specified period which shall be fixed by the Deputy Conservator.
- (6) Each tender shall be accompanied by an earnest money deposit, to be paid by bank draft, to be fixed by the Deputy Conservator in each case.

- (7) The tenders received after the due date and time, shall be summarily rejected.
- (8) The sealed tenders shall be opened in the presence of tenders present on the date and time fixed by the Deputy Conservator for opening the tenders and if any tenderer is not present at the time fixed for opening the tenders, his tender may be rejected with out opening, giving the reasons.
- (9) The acceptance of the offer shall be communicated to the successful tenderer.
- (10) The successful tenderer shall pay 25 per cent of the bid amount within five days from the date of acceptance of the tender and the balance amount within 15 days from that date. In addition to the tender value the successful tenderer will also deposit such money/bank guarantee for a value as determined by the Deputy Conservator as security deposit which will be returned within a period of 3 months after successful completion. However, no interest shall be paid by the port on the deposit so made.
- (11) In default of payment of 25 per cent of the bid amount within five days from the date of acceptance of the tender, the sale shall, unless otherwise ordered, stand automatically revoked, and the earnest money shall be forfeited, and the vessel shall be resold at the risk of the tenderer whose tender was accepted.
- (12) If the vessel is not removed from the harbour for any reason within 30 days, additional berth hire charges beyond the normal charges, as laid down in the Port's Scale of Rates, shall be levied.
- (13) Under no circumstances, the buyer shall be permitted to dismantle or break the ship inside the Harbour or within the Port limits, unless or otherwise it is specifically permitted to do so.

6. Liabilities of the buyer of the vessel :

- (1) On and from the date of acceptance of the tender, all rates/penalties and other charges shall be to the buyer's account.
- (2) Upon acceptance of the tender, the buyer shall deposit with the port an amount representing 30 days port dues, fees and charges as may be estimated by the Deputy Conservator to be payable for such period.
- (3) Customs and excise duties, sales tax, local taxes etc., shall be as applicable on buyer's account and he should remit the amount on account of such duties and taxes to the concerned authorities and produce the receipts for such payments before the clearance is granted to the vessel by the Port.
- (4) (a) Immediately after the acceptance of the vessel by a certificated master, certificated Officers and certificated engineers with an adequate number of crew during the period the vessel is kept inside the harbour.
- (5) In case of failure by the buyer in making necessary arrangements for manning and maintaining the vessel, the Port authorities may hire and employ proper persons for that purpose and all reasonable expenses incurred in this connection shall be recoverable from the buyer.

FORM I

(See Regulation 4(1))

To
The Master,
m.v./s.s.

Subject M.V Rates/Penalties – Non-payment of rates/penalties – Issue of Notice demanding immediate payment.

Sir,

Please refer to my letter cited. You were requested to pay a sum of Rs..... as ontowards the following rates/penalties payable under the provisions of the Major Port Trusts Act, 1963/Regualtions or orders made thereunder due to the Port Trust on or before1..... 2..... 3..... No steps have so far been taken by you as the master of the vessel, or by the Agents, to pay dues to the Port as demanded towards aforesaid rates/penalties. As on.....an amount of Rs..... is due from the vessel under your command.

2. Notice is hereby given to you for making the above payment in this seven days on receipt of this Notice, failing which provisions of section 64 of the Major Port Trusts Act, 1963, will be invoked to distrain or arrest the vessel and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount so due to the Board, together with such further amount as may accrue for any period during which the vessel is under distrain or arrest, is paid.

Yours faithfully,

DEPUTY CONSERVATOR

Copy to: M/s Owners of m.v.

Copy to: M/s Agents of the vessel

FORM II

(See Regulations 4(5))

To

The Master,

m.v./s.s.

Subject: Shifting – M.V Rates/penalties – Non-payment of rates/penalties –
Distrain Order – Issue of.

Ref: My letter of even number date

Sir,

Please refer to my letter cited. You were requested to pay a sum of Rs.....
as on towards the Rates/Penalties due to the..... Port Trust on or
before..... No steps have so far been taken by you as master of the vessel or
by the agents to pay the dues to the Tuticorin Port Trust as demanded
on..... You are hereby requested that an approximate amount of Rs.....
towards rates/penalties as on..... is due from the vessel under your
command.

In view of the non-payment of the above rates/penalties due to the Tuticorin Port Board, I hereby pass orders in exercise to the powers given under the provisions of section 64 of the Major Port Trusts Act, 1963, that the Vessel my..... is hereby distrained and will be kept under detention until the amount due to the Tuticorin Port Trust Board together with such further amount as may accrue for any period during which the vessel is distrained and detained is paid.

Please also note that in case the above said amount and the cost of the distraint is not settle within 5 days from the date of distraint order (i.e) I shall be constrained to sell the above vessel under the powers vested under section 64 of the said Act and the sale proceeds will be adjusted against the charges due to the Board including the cost of the sale of the vessel.

Yours faithfully,

DEPUTY CONSERVATOR

Copy to: M/s Owners of m.v.

Copy to: M/s Agents of the vessel.

FORM III

(See Regulation 5(4))

ADVERTISEMENT

In exercise of the powers conferred by section 64 of the Major Port Trust Act, 1963, Tuticorin Port Trust invite sealed tenders from the intended purchasers for the sale of the vessel m.v..... on "as is where " basis.

2. Brief particulars of the vessel are as follows:

Name of the vessel

Year of Built

G.R.T

N.R.T.

Length

Breadth

Depth

Deadweight

Classification

Engine

B.H.P.

L.D.T.

YEAR OF BUILT

Yard

3. Offers in double sealed covers are invited before..... Hours on..... addressed to the DEPUTY CONSERVATOR, Tuticorin Port Trust alongwith an Earnest Money Deposit of Rs..... (Rupees.....only) by Bank Draft payable at in favour of..... The tender should be submitted superscribing on the envelope TENDER FOR THE PURCHASE OF M.V.....

4. All Tenders received after the due date and time will be summarily rejected.

5. The sealed tenders for the purchase of the vessel shall be opened on..... in the presence of the DEPUTY CONSERVATOR, Tuticorin Port Trust in his office. The acceptance of the offer will be communicated to the successful tenderer.

6. The successful tenderer shall pay 25 per cent of the bid amount within five days from the date of acceptance of the tender and the balance amount within 15 days from that date. No Bank Guarantee will be accepted. In default of payment of 25 per cent of the bid amount within five days from the date of acceptance of the tender, the sale shall unless otherwise ordered, stand automatically revoked and the Earnest Money Deposit of Rs..... forfeited and the ship resold at the risk of cost of the tenderer, whose tender was accepted. Should the balance of sale consideration be not paid within the aforesaid time of 15 days from the acceptance of the tender, the sale shall stand automatically revoked and the Earnest Money of Rs..... be forfeited. The 25 per cent amount already paid shall be retained to meet any shortfall or other expenses arising out of the said sale.

7. Customs, Excise and Import duty, Sales Tax, Local Taxes, etc as applicable on "BUYERS ACCOUNT"

8. The tenders will be opened on.....at..... in the presence of the DEPUTY CONSERVATOR , Tuticorin Port Trust. In his office and the acceptance of any tender will be at the sole discretion of the DEPUTY CONSERVATOR, Tuticorin Port Trust.

9. The ship should be removed from the Tuticorin Port Trust within 30 days from the date of sale. During this time the ship should be kept manned by the Certificated Master, Certificated Officers and Certificated Engineer plus and adequate number of crew. These arrangements should be made by the Buyer.

10. The Buyer will have to pay all the rate/penalties from the date of sale of the vessel till the date of actual removal of the vessel from the harbour in accordance with the Major Port Trusts (Distraint or Arrest and sale of vessels) Regulations, 1988.

11. Under no circumstances, the Buyer will be permitted to dismantle the ship inside the harbour or within Port limits, unless or otherwise it is permitted to do so.

12. The ship which is lying at..... may be inspected by prior appointment with the DEPUTY CONSERVATOR from.....to.....

13. The Port reserves the right to reject any or all the tenders without assigning any reason whatsoever.

(PORT TRUST)

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YOGENDRA NARAIN, Jt. Secy.

6of page8