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Tariff Authority for Major Ports

G.No. 445

New Delhi,

08 October 2021

NOTIFICATION

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from the Chennai Port Trust for incorporation of separate provisions for allotment of space inside Custom bound area for other than cargo storage on immediate basis in the existing Scale of rates of estate of CHPT, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

TARIFF AUTHORITY FOR MAJOR PORTS
Case No. TAMP/6/2021-CHPT

Chennai 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 proposal received from Chennai Port Trust (CHPT) for incorporation of separate provisions for allotment of space inside Custom bound area for other than cargo storage on immediate basis in the existing Scale of rates of estate of CHPT.

2.1. The estate rentals of CHPT was last approved by this Authority vide its Order No. TAMP/56/2014-CHPT dated 20 December 2014. This Order was notified in the Gazette of India on 9 January 2015 vide Gazette No 13. The Schedule of Rate (SOR) structure approved for CHPT estate came into effect after expiry of 15 days from the date of notification of the Order in the Gazette i.e. from 24 January 2015 and was valid for a period of 5 years i.e. upto 23 January 2020. The estate rentals as approved by the said Order were subject to 5% escalation per annum.

2.2. Subsequently, this Authority vide its Order No. TAMP/56/2014-CHPT dated 20 February 2020 (notified on 03 March 2020) extended the validity of the existing SOR for estate of CHPT till 23 April 2020 or till the effective date of implementation of the revised SOR, whichever is earlier.

2.3. Since the existing validity of the SOR has already expired, the CHPT was requested vide our letter dated 22 September 2020 to file a proposal for revision of estate rentals for the CHPT, following the extant Land Policy Guidelines.

2.4. In response, the CHPT vide its letter No.A.O.(SOR)/Estate Rental / 2019 / F dated 6 October 2020 filed a proposal for revision of estate rentals at CHPT. Considering the annual escalation of 5% implemented by CHPT as per its existing Rent Schedule, the increase proposed by the port was generally reported to be in the range of 0.17% to 1.28% for different categories of land.

2.5. The proposal of CHPT was taken up on consultation with relevant users. During the consultation process, various users/ user associations objected to the proposal of CHPT. In view of the objections made by the various users/ user associations, the CHPT withdrew its proposal of October 2020 and sought extension of the validity of the existing SOR for a period of two years.

2.6. Based on the request made by CHPT and in order to avoid a vacuum in the estate rentals, this Authority vide its Order no. TAMP/43/2020-CHPT dated 28 December 2020, has extended the validity of the existing estate rentals at CHPT for a period of two years, from the expiry of the original validity of the lease rentals. i.e. from 24 January 2020 to 23 January 2022. The said order was also notified in the Gazette of India on 15 January 2021 vide Gazette No.29

3.1. In this backdrop, the CHPT vide its letter SOR/Estate Rental/37361/2020/F dated 02 January 2021 has come up with a proposal for incorporation of separate provisions for allotment of space inside Custom bound area for other than cargo storage on immediate basis in the existing Scale of rates of estate of CHPT. The main points made by the CHPT in its proposal are summarized below:

- (i). As per the Land Policy Guidelines, the land is to be allotted inside the Port area only through E-tender-cum-Auction, wherever feasible and to be approved by the Board. However, keeping in view of the immediate requirement of the areas by the Trade/Port Users for a short period like (i) Repairs to Navy and Coast Guard crafts by private parties, (ii) Temporary foreign exchange counters, (iii) Displaying the handicrafts and cultural heritage souvenir, (iv) Assembling of equipment, (v) Maintenance of Boats, (vi) Food court kiosks, etc. the same are to be allotted without e-tender-cum-auction process.
- (ii). In view of the above, a new scheme on the lines of immediate cargo storage allotment of land inside the Custom bound area for immediate requirements of areas on case to case basis for other than cargo storage was placed before the Board for its approval.

3.2. Thus, the proposal of the port is to incorporate the following schedule as “Scale (3) – Licence Fee for the allotment of space inside custom bound area for other than cargo storage on immediate basis”, in the existing scale of rates of estate of CHPT :

“(3) LICENCE FEE FOR THE ALLOTMENT OF SPACE INSIDE CUSTOM BOUND AREA FOR OTHER THAN CARGO STORAGE ON IMMEDIATE BASIS”

- (a). License fee is to be charged at the basic rate as per SoR for estate rentals upto one month and subsequently escalate the rates for the subsequent periods as under:

First month of allotment or part thereof	Rate applicable as per Scale – 1 above
Second month of allotment or part thereof	SoR Rate (Scale – 1) +25%
Third month of allotment or part thereof	SoR Rate (Scale – 1) +50%
Fourth month of allotment or part thereof and afterwards	Double the SoR rate (Scale – 1)

The rates prescribed above are subject to annual escalation or revision of estate rentals, from time to time.

- (b). **Conditions of allotment:**
 - (i). Application for the required area shall be made to the Traffic Manager, ChPT
 - (ii). Licence fees shall be paid in advance. Penal interest @ 15% p.a. (as provided for in the General Conditions of SoR) shall be levied on the late payment upto 3 days from the due date. If, for any reason, payment is delayed beyond 3 days from the due date, the allotment will be cancelled in case of Fresh allotment. In case of extension of allotment, the non-remittance of licence fee beyond 3 days, the occupation will be treated as unauthorized.
 - (iii). Any unauthorized occupation of the area shall be liable for payment of penal license fee as per SoR as applicable for the relevant period of occupation.
 - (iv). Two months licence fee as Security Deposit paid in advance shall be refunded after deducting any dues payable to ChPT and also after handing over of the vacant possession of the area by the User.
 - (v). The Period for the purpose of calculation of Licence fees shall be counted from the date of acceptance of the Allotment Order till the date of handing over the possession after vacation.
 - (vi). The space allotted shall be deemed to be vacated once the purpose for which the allotment made is fulfilled.

- (vii). In case the due rent is not paid, the amount due shall be adjusted from the Security Deposit on expiry of grace period of 3 days. The port services including Harbour Entry Permit to the allottee will be stopped immediately after the expiry of the grace period of 3 days. Thereafter action will be initiated under the provisions of the Public Premises (Eviction of unauthorized occupants) Act 1971 for eviction of the area and for recovery of the Port dues.
- (viii). The area shall be used only for the purpose for which allotment is made and if the occupation is continued after the purpose is fulfilled, the same will be treated as "Unauthorised occupation".
- (ix). The minimum duration of allotment is for one month and the maximum duration is up to 6 calendar months.

3.3. The CHPT has furnished the copy of the Board Resolution approving the subject proposal.

4. In accordance with the consultative procedure prescribed, a copy of the CHPT proposal was forwarded to the concerned users/ user organizations vide our letter dated 08 January 2021 seeking their comments. None of the users have responded till the case was finalised.

5. In view of the outbreak of COVID – 19 and in pursuance of the Ministry of Shipping (MOS) letter No. 11053/30/2020-Coord. dated 16 April 2020 to hold virtual meetings, a joint hearing on the case in reference was held on 18 February 2021 through Video Conferencing. At the joint hearing, CHPT made a brief power point presentation of its proposal. The CHPT and the users/ user organisations have made their submissions during the joint hearing.

6.1. During the Joint Hearing, based on the request made by the users, the CHPT has proposed to review its proposal for prescription of SOR rate for initial first 3 months. Accordingly, the CHPT was requested vide letter dated 23 February 2021 to furnish its revised proposal alongwith the Board's approval. This was followed by reminders dated 04 June 2021, 29 June 2021 and 08 July 2021.

6.2. In this connection, the CHPT under cover of its letter No. SOR/Estate Rental/37361/2020/F dated 16 July 2021 has furnished the revised proposal. The CHPT has also furnished its Board Resolution vide BR No.31 dated 23 June 2021 approving the revised proposal for incorporation of separate provision for allotment of space inside custom bound area for other than cargo storage on immediate basis in the existing scale of rates of CHPT.

6.3. A comparative position of the modifications proposed by the CHPT in its revised proposal of July 2021 with reference to its earlier proposal dated 02 January 2021 are as follows :

(a). **License Fee**

Period of Allotment	Rates as per Proposal already sent on 02.01.2021	Rates as per revised proposal dated 16.07.2021
First month of allotment or part thereof	Rates applicable as per SoR	Rates applicable as per SoR
Second month of allotment or part thereof	SoR Rate +25%	Rates applicable as per SoR
Third month of allotment or part thereof	SoR Rate +50%	Rates applicable as per SoR
Fourth month of allotment or part thereof and afterwards	Double the SoR rate	Double the SoR rate

(b). Conditions of allotment:

Sl. No	Existing	Proposed
(ii)	Licence fees shall be paid in advance. Penal interest @ 15% p.a. (as provided for in the General Conditions of SoR) shall be levied on the late payment upto 3 days from the due date. If, for any reason, payment is delayed beyond 3 days from the due date, the allotment will be cancelled in case of Fresh allotment. In case of extension of allotment, the non-remittance of licence fee beyond 3 days , the occupation will be treated as unauthorized.	Licence fees shall be paid in advance. Penal interest @ 15% p.a. (as provided for in the General Conditions of SoR) shall be levied on the late payment upto 3 Port Administrative Working days from the due date. If, for any reason, payment is delayed beyond 3 Port Administrative Working days from the due date, the allotment will be cancelled in case of Fresh allotment. In case of extension of allotment, the non-remittance of licence fee beyond 3 Port Administrative Working days , the occupation will be treated as unauthorized.
(vii)	In case the due rent is not paid, the amount due shall be adjusted from the Security Deposit on expiry of grace period of 3 days . The port services including Harbour Entry Permit to the allottee will be stopped immediately after the expiry of the grace period of 3 days . Thereafter action will be initiated under the provisions of the Public Premises (Eviction of unauthorized occupants) Act 1971 for eviction of the area and for recovery of the Port dues.	In case the due rent is not paid, the amount due shall be adjusted from the Security Deposit on expiry of grace period of 3 Port Administrative Working days . The port services including Harbour Entry Permit to the allottee will be stopped immediately after the expiry of the grace period of 3 Port Administrative Working days . Thereafter action will be initiated under the provisions of the Public Premises (Eviction of unauthorized occupants) Act 1971 for eviction of the area and for recovery of the Port dues.

7. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the arguments made by the concerned parties will be sent separately to the relevant parties. These details will also be made available at our website <http://tariffauthority.gov.in>.

8. With reference to totality of information collected during the processing of this case, the following position emerges :

- (i). The estate rentals of CHPT was last approved by this Authority vide its Order No. TAMP/56/2014-CHPT dated 20 December 2014 following the provisions of the Land Policy Guidelines for Major Port Trusts, 2014. The said estate rental has come into effect from 24 January 2015 and was valid for a period of 5 years i.e. upto 23 January 2020. Thereafter, for the reasons as brought out elaborately at the earlier paras no. 2.4 to 2.6 of this Order, this Authority vide its Order no. TAMP/43/2020-CHPT dated 28 December, 2020 has extended the validity of the existing estate rentals at CHPT for a further period of two years, i.e. from 24 January 2020 to 23 January 2022.
- (ii). Keeping in view the immediate requirement to allot areas inside custom bound area without resorting to e-tender-cum-auction process, to the Trade/ Port Users for a very short period, to undertake various activities viz., repairs to Navy and Coast Guard crafts by private parties, maintenance of Boats, assembly of equipment, temporary foreign exchange counters, display of handicrafts and cultural heritage souvenir, Food court kiosks etc., the CHPT has come up with a proposal for incorporation of separate provisions for allotment of space inside Custom bound area for other than cargo storage on immediate basis in the existing Scale of rates of estate of CHPT. The proposal of the port has the approval of its Board of Trustees.
- (iii). The proposal of the port was initially received in January 2021. At the instance of users/ user organisations, the CHPT has revised its proposal in July 2021. The revised proposal furnished by CHPT vide its letter dated 16 July 2021 and the information furnished by the CHPT during the processing of the case has been considered in the analysis.
- (iv). The Scale 1 of the existing SOR of estate rentals of CHPT prescribes lease rentals for allotment of land/ space/ buildings at CHPT. The said lease rentals as per Scale 1 has been proposed by CHPT to be levied for allotment of space inside custom bound area for other than cargo storage on immediate basis for initial three months of allotment. From the 4th month onwards, the Port has proposed to levy double the rates as prescribed in Scale 1 of the existing SOR of estate rentals of CHPT.

In this connection, the port has reasoned that though initially, the area is allotted for a short period as requested by the users, there is a tendency on the part of users to keep on seeking extension in the period of allotment on a month on month basis. Given that the land is being allotted inside the custom bound area and since the Land Policy Guidelines stipulates allotment of land inside the Port area only through E-tender-cum-Auction, the port has come up with a proposal, wherein the port intends to allot land only for a period of 3 months at the normal rates and for the period beyond 3 months, it has proposed to levy double the charges, with an intent to discourage the practice of users seeking extension beyond the original allotment period.

- (v). Based on the submissions made by the Port and given that the revised proposal furnished by CHPT has been formulated by the port, keeping in view the request made by the users, and taking into account the approval of the Board of Trustees, this Authority is inclined to incorporate the provisions relating to levy of Licence

Fee for the allotment of space inside custom bound area for other than cargo storage on immediate basis, in its existing Estate SOR, as proposed by the Port.

- (vi). The CHPT has proposed a note stating that the rates prescribed are subject to annual escalation or revision of estate rentals, from time to time. Since the rates proposed by the port draws reference to the Scale 1 of the Estate SOR of CHPT and given that the rates prescribed in Scale 1 are subject to annual escalation, the proposed note is approved.
- (vii). The CHPT has also proposed few conditionalities for allotment of space inside custom bound area for other than cargo storage on immediate basis. Each of the said conditionality has been discussed below :
 - (a). The condition at sr. no. (i) stating that the application for required area shall be made to the Traffic Manager, CHPT, is seen to be a general condition.
 - (b). The condition at sr. no. (ii) relates to payment of advance lease rentals and levy of penal interest for the late payment upto 3 port administrative working days. Since the proposed note shall instil discipline amongst the users to make timely payments, the proposed note is approved.
 - (c). The conditions at sr. no. (iii) and (viii) are general conditions regarding unauthorized occupation of the area. Notes relating to unauthorized occupation are prevalent in the existing estate SOR of CHPT. As such, the notes proposed by CHPT is approved.
 - (d). The note no. (iv) proposed by CHPT stipulates that two months licence fee paid in advance as Security Deposit shall be refunded after deducting any dues payable to CHPT and also after handing over of the vacant possession of the area by the User. Since none of the users have specifically objected with regard to the said note, this Authority is inclined to approve the proposed condition.
 - (e). The conditions at sr. no. (v) to (vii) and (ix) are seen to be general conditions relating to period of calculation of license fees, vacation of land after fulfillment of the purpose, adjustment of security deposit in case of rent due is not paid, eviction of the area as per the provisions of the Public Premises (eviction of unauthorized occupants) Act, 1971 and minimum and maximum duration of allotment of area. Since the proposed notes shall instil discipline amongst the users in the usage of the land and also since none of the users have specifically objected in this regard, this Authority is inclined to approve the above proposed conditions.
- (viii). Orders of this Authority generally come into effect prospectively after expiry of 30 days from the date of Gazette Notification unless otherwise different arrangement is specifically mentioned in the respective tariff Orders. Accordingly, this Authority is inclined to grant approval to introduce a new Scale – 3 in the Chapter – VIII of Scale of Rates of Estate Rentals of CHPT prospectively after the expiry of 30 days from the date of Notification of this Order in the Gazette of India.

9.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority accords approval for incorporation of the following new schedule as “Scale 3 – Licence Fee for the allotment of space inside custom bound area for other than cargo storage on immediate basis”, in the Chapter – VIII of existing scale of rates of estate of CHPT:

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SCALE 3: Licence fee for the allotment of space inside custom bound area for other than cargo storage on immediate basis:

- (a). License fee will be charged at the basic rate as per SoR upto 3 months and double the SOR rate from 4th month onwards:

Period of Occupation	Rates
First month of allotment or part thereof	Rates applicable as per SoR at Scale -1.
Second month of allotment or part thereof	Rates applicable as per SoR at Scale -1
Third month of allotment or part thereof	Rates applicable as per SoR at Scale -1
Fourth month of allotment or part thereof and afterwards	Double the SoR rate at Scale -1

The rates prescribed above are subject to annual escalation or revision of estate rentals, from time to time.

(b). **Conditions of allotment:**

- (i) Application for required area shall be made to the Traffic Manager, CHPT
- (ii). Licence fees shall be paid in advance. Penal interest @ 15% p.a. (as provided for in the General Conditions of SoR) shall be levied on the late payment upto 3 Port Administrative Working days from the due date. If, for any reason, payment is delayed beyond 3 Port Administrative Working days from the due date, the allotment will be cancelled in case of Fresh allotment. In case of extension of allotment, the non-remittance of licence fee beyond 3 Port Administrative Working days, the occupation will be treated as unauthorized.
- (iii). Any unauthorized occupation of the area shall be liable for payment of penal license fee as per SoR as applicable for the relevant period of occupation.
- (iv). Two months licence fee as Security Deposit paid in advance shall be refunded after deducting any dues payable to CHPT and also after handing over of the vacant possession of the area by the User.
- (v). The Period for the purpose of calculation of Licence fees shall be counted from the date of acceptance of the Allotment Order till the date of handing over the possession after vacation.
- (vi). The space allotted shall be deemed to be vacated once the purpose for which the allotment made is fulfilled.
- (vii). In case the due rent is not paid, the amount due shall be adjusted from the Security Deposit on expiry of grace period of 3 Port Administrative Working days. The port services including Harbour Entry Permit to the allottee will be stopped immediately after the expiry of the grace period of 3 Port Administrative Working days. Thereafter action will be initiated under the provisions of the Public Premises (Eviction of unauthorized occupants) Act 1971 for eviction of the area and for recovery of the Port dues.
- (viii). The area shall be used only for the purpose for which allotment is made and if the occupation is continued after the purpose is fulfilled, the same will be treated as “Unauthorised occupation”.

- (ix). The minimum duration of allotment is for one month and the maximum duration is up to 6 calendar months.

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9.2 The CHPT is advised to suitably incorporate the above provisions in the Chapter – VIII of existing scale of rates of estate of CHPT.

9.3. The above prescription shall come into effect after expiry of 30 days from the date of Notification of this Order in the Gazette of India and its validity shall remain co-terminus to the extended validity of the existing Schedule of Rent of CHPT i.e. upto 23 January 2022.

(T.S. Balasubramanian)
Member (Finance)

**SUMMARY OF THE ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING
BEFORE THE AUTHORITY.**

TAMP/6/2021-CHPT	:	Proposal received from Chennai Port Trust (CHPT) for incorporation of separate provisions for allotment of space inside Custom bound area for other than cargo storage on immediate basis in the existing Scale of rates of estate of CHPT.
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In view of the outbreak of COVID – 19 and in pursuance of the Ministry of Shipping (MOS) letter No. 11053/30/2020-Coord. dated 16 April 2020 to hold virtual meetings, a joint hearing on the case in reference was held on 18 February 2021 through Video Conferencing. At the joint hearing, CHPT made a brief power point presentation of its proposal. The CHPT and the users/ user organisations have made the following submissions during the joint hearing.

Chennai Port Trust (FA & CAO)

- (i). To meet the immediate requirement of Trade/ Port users, the port has decided to allot land for a short period for other than cargo storage viz. repairs to Navy and Coast Guard crafts by private parties, temporary foreign exchange counters, displaying the handicrafts and cultural heritage souvenir, assembling of equipment, maintenance of Boats, Food court kiosks etc. The Board of CHPT has approved the proposal.
- (ii). We request TAMP to accord approval to the proposal of CHPT.

Tamil Nadu Sailing Association

- (i). These are challenging times. The economy is still suffering. It takes a minimum of 3 months for any small craft to get repaired. As such prescribing rates on monthly basis is not advisable. The port can prescribe incremental slab rates, but the slab should be prescribed on a quarterly basis. It will help the Trade and Port in the long run.

Chennai Custom Brokers Association

- (i). Our only request is that in prescription of levy of penal interest, 3 days should be modified to 3 working days.

Chidambaram Shipcare P. Ltd.

- (i). Is it applicable to existing licensees?

Hindustan Marine Engineering Works

- (i). We need areas on a long term basis, preferably for 11 months upfront.

Royal Madras Yacht Club

- (i). The port should encourage repair and maintenance of boats. These are skilled activities and require out station repairers and materials. However, after pandemic, movement of out station workers is a challenge. Therefore, port can offer 11 months lease.
- (ii). For the initial 11 months, port can prescribe normal SOR rates and thereafter prescribe incremental slab rates. This will surely help the port to attract more traffic.

[Chairman, CHPT : Regular allotment procedure will follow].

Hari & Co.

- (i). We are weighbridge operators and bring the mobile weighbridge on a vessel to vessel basis. As such, ours should be treated as a port related activity and levied accordingly as per the SOR.

[Chairman, CHPT : We have to examine].

Mapillai Niwas

- (i). We are looking for a minimum area and on a long term basis.

[Chairman, CHPT : We will follow tendering procedure for long term allotment].

CPSA

- (i). We request the port to soften its stand on the penal provisions on delayed payments.

MCC

- (i). We request the port to not increase any charges till the year end.

Chairman, CHPT

- (i). We have noticed that the users need land for non-port related activities. Initially, the area is allotted for a short period. But there is a tendency on the part of users to keep on seeking extension in the period of allotment on a month on month basis. This becomes cumbersome on the part of port and we intend to discourage this practice. Board feels that frequent extension without tendering is not proper. Hence, we have come up with this proposal with the approval of our Board.
- (ii). It is clarified that the existing allotments will not get affected.
- (iii). We are in the process of revamping the penal provisions, which would be uniformly applied across all land lease allotment. We will be approaching TAMP with a fresh proposal in this regard.
- (iv). Based on the users' request, we would like to review the proposed SOR, by prescribing the SOR rates for the 1st 3 months, instead of the proposed 1 month only with the approval of the Board. Beyond 3 months, incremental rates will be prescribed.

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