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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 61 **New Delhi,** **10 February 2016**

NOTIFICATION

In exercise of the powers conferred under Section 48 of the Major Port Trusts Act, 1963 (38 of 1963) and in compliance of the Order dated 08 October 2014 passed by the Hon'ble High Court of Madras, the Tariff Authority for Major Ports hereby decides the issue of extent of revision of Container storage charges at the Chennai Port Trust (CHPT) for the period from 6 July 1994 to August 2001, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

TARIFF AUTHORITY FOR MAJOR PORTS

Case No. TAMP/5/2015-CHPT

The Chennai Port Trust - - - Applicant

QUORUM

(i). Shri. T.S. Balasubramanian, Member (Finance)
(ii). Shri. Rajat Sachar, Member (Economic)

O R D E R

(Passed on this 15th day of January 2016)

This case relates to the issue of extent of revision of Container storage charges, if any, at Chennai Port Trust (CHPT) for the period from 6 July 1994 to August 2001 referred by the Hon'ble High Court of Judicature at Madras to this Authority.

2.1. The CHPT vide its letter dated 22 December 2014 has communicated about revision of container storage charges from Rupee denomination to US Dollar denomination with reference to an Order dated 8 October 2014 passed by Hon'ble High Court of Madras in WA No. 1746 & 1747 of 2000. The CHPT has furnished a copy of the High Court Order dated 8 October 2014. The main points made by the CHPT in its communication dated 22 December 2014 are summarized below :

(i). The Hon'ble Madras High Court vide its Order dated 8 October 2014 has disposed of the Writ Appeal No. 1746 and 1747 of 2000 filed by the CHPT against the Madras Steamer Agents' Association and other related Writ Appeals filed by various firms, with the following direction:

"Learned Counsel for parties have obtained instructions and state that they would follow the course of action as suggested in our last order 17.09.2014. The issue of extent of revision of charges, if any is referred to the Statutory Committee under Chapter V-A of the Major Port Trusts Act, 1963, by consent, though of course, this provision was introduced subsequently. Thus it is for the Committee as an authority agreed to by the learned Counsel for parties, to decide the issue of revision of charges. The authority will endeavor to complete the task within a period of six months from today after putting parties to notice. This is qua the period from 06.07.1994 to August 2001."

(ii). In this connection, the summarised position of the case as given by CHPT in its letter dated 22 December 2014 are given below:

(a). As per the Scale of Rates of CHPT, the container storage charges were levied in Indian Rupees and collected in Indian Rupees since the commencement of Container terminal operations in CHPT.

(b). During the year 1994, it was proposed to revise the Container Storage Charges from Indian Rupee denomination to US Dollar denomination. Accordingly, a Correction Slip No. 9 was issued to the Madras Port Trust (MPT) Scale of Rates 1992. As per the Correction Slip, the Port shall levy the container storage charges in US$ buying rate and collect the dues in Indian rupees as per the exchange rate prevailing on the date of arrival of the container vessel, with effect from 6 July 1994. The above said correction slip was published on 19 July 1995 in the Gazette of Tamil Nadu. The CHPT has furnished a copy of the said Notification.

(c). The Madras Steamer Agents (MSA) challenged the Notification of the Port for levying the container storage in US$ by filing Writ Petitions before the Hon'ble High Court and got an injunction. A counter affidavit was filed by the CHPT on 29 September 1997. Thereafter, the case was heard and the Hon'ble Single Judge passed an Order on 28 August 2000 quashing the Notification of the CHPT. A copy of the Order of the Single Judge dated 28 August 2000 is furnished by CHPT.

(d). Aggrieved by this, Writ Appeal No. 1746 and 1747 of 2000 was filed by the CHPT before the Division Bench to set aside the Court Order dated 28 August 2000. The Division Bench passed an Interim Order to levy the charges in US $ from 22 November 2000 onwards. A copy of the Interim Order of the Division Bench is also furnished by CHPT. Accordingly, the container storage charges were collected in US Dollar terms from 22 November 2000.

The interim Order dated 22 November 2000 passed by the Division Bench (as referred at para 2.1 (ii) (d)) is reproduced below:

***"**Petition praying that the High Court will be pleased to stay the operation of the order dated 28.8.2000 made in W.P.Nos.11747 of 1994 & 5806 of 1997 respectively on the file of the Hon'ble High Court (in C.M.P. Nos.15038 & 15040/2000) pending W.A.Nos.1746 & 1747 of 2000 Appeal under Clause 15 of the letters patent against the order of the Honourable Mr. Justice P. Shanmugam, dated 28.08.2000 and made in the exercise of the Special Original Jurisdiction of the High Court in W.P.Nos.11747 of 1994 & 5806 of 1997 respectively.*

Petition on being called to-day and upon hearing counsel, the Court has ORDERED as follows:

"Heard the Cavsator.

*Notice of motion returnable by four weeks. Meanwhile, the order of the learned single judge is stayed directing refund of the amount, and collecting the arrears as per the new tariff rates are concerned. However, the respondent will pay the rates as per the revised tariff from today onwards**".***

(e). With regard to the container storage charges payable for the period from 6 July 1994 to 21 November 2000, the matter was pending before the Hon'ble Madras High Court. The difference of container storage charges recoverable from various firms (141 firms) for the period from July 1994 to November 2000 is around ₹116.50 crores. [The CHPT has furnished the firm wise breakup of difference of amount payable].

(f). In the meantime, on 30 November 2001, the Container Terminal was handed over to M/s Chennai Container Terminal Private Ltd (CCTPL) for handling of containers on long term lease for 30 years under privatization agreement. After the handing over of Container Terminal to CCTPL, some of the firms requested for refund of the security deposit and excess amount paid by them. Based on the above request, Chairman's sanction has been obtained on 7 August 2004 and 26 June 2008, to withhold the refunds of the firms which handled containers from July 1994 to November 2000, since the case relating to Container Storage Charges was pending in the Hon'ble High Court of Madras.

(g). Under the above circumstances, the Writ Appeal No. 1746 and 1747 of 2000 filed by the CHPT, were listed for final hearing on 17 September 2014, along with other petitions/ appeals filed by various other firms on the above subject. In the hearing held on 17 September 2014, the Court directed the Counsel for both the parties to obtain instruction whether the entire case (i.e. W.A. 1746 and 1747 of 2000 filed by CHPT against the Steamer Agents Association regarding the Container Storage Charges) could be sent to TAMP for adjudication.

(h). Thereafter, the case was again heard on 8 October 2014, wherein, the Hon'ble High Court disposed of the Writ Appeals filed by CHPT along with related Petitions / Appeals filed by various firms.

2.2. In this backdrop, the CHPT in its letter has requested this Authority to take up the case and pass necessary order for recovery of the Container storage charges for the period from 6.7.1994 to 21.11.2000, as per the Correction Slip No 9 dated 6.7.1994 issued by the CHPT.

2.3. The Hon'ble Single Judge had considered the following two questions in the Lordship's Order dated 28 August 2000:

(i). What is the nature of levy and who is liable and
(ii). Whether the levy is reasonable

The issue referred by the Hon'ble Division Bench of the High Court of Madras to this Authority is to decide the "extent of revision of charges, if any". Therefore, the relevant extract of the Order dated 28 August 2000 passed by Hon'ble Single Judge (as referred at para 2.1 (ii) (c) above), relating to the second question "whether the levy is reasonable" considered by the Hon'ble Single Judge, taken into account only for the purpose of understanding the perspective of the issue referred by the Hon'ble Division Bench, will be sent separately to relevant parties. These details will also be made available at our website http://tariffauthority.gov.in.

3. Since the Division Bench of the Hon'ble High Court of Madras have directed this Authority to complete the task after putting parties to notice, the copy of the CHPT letter dated 22 December 2014 alongwith the enclosures was circulated to the 19 number of parties, as listed in the Order dated 8 October 2014 passed by the Hon'ble High Court of Madras, for their comments. Further, since the Ministry of Shipping (MOS) was also seen to be one of the Respondents in the Writ Appeal filed by the CHPT, a copy of the CHPT communication dated 22 December 2014 alongwith enclosures was also sent to MOS for their comments. Out of the 20 parties, we have received comments from some parties. These comments were forwarded to the CHPT as feedback information. After a reminder, the CHPT vide its email dated 31 March 2015 has responded.

4.1. As stated earlier, the copy of the CHPT Communication dated 22 December 2014 was forwarded to 19 parties as listed in the Order of the Hon'ble High Court dated 8 October 2014. In this connection, the communication sent to M/s. India Trident Maritime Pvt Ltd, M/s. W.W. Shipping & Forwarding Pvt Ltd, M/s. United Liner Agencies (India) Pvt Ltd, M/s. Vijaya Industrial Products (P) Ltd., Cuddalore, M/s. Parekh Marine Agencies Pvt. Ltd., Chennai, M/s. Satya Sai Surgicals Ltd., Bangalore, M/s Gaurav Impex, New Delhi, M/s Sri Sachithananthan Plastics, Chennai, M/s Sumangal Overseas Ltd, M/s Webro Exports Ltd, Bangalore, M/s Metalico Impex, Delhi, and Simpex Trading Co. (P) Ltd have been returned to us by the postal department due to the change in their address. In this regard, it is noteworthy that the addresses on which the subject communication was sent to the said parties were the addresses as reflected in the copy of the Order dated 8 October 2014 passed by the Hon'ble High Court of Madras forwarded to us by CHPT vide its letter dated 22 December 2014.

4.2 Accordingly, the CHPT was requested vide our letter dated 22 January 2015 and 30 January 2015 to furnish the latest addresses of the above mentioned parties at the earliest in order to enable us to forward the copy of the CHPT communication to these parties again. After reminders, the CHPT vide its letter dated 20 February 2015 has furnished the updated address of only two parties i.e. M/s. United Liner Agencies (India) Pvt Ltd and M/s. Parekh Marine Agencies Pvt. Ltd. With regard to others, the CHPT has said that the addresses as per their records are also found to be the same addresses as given in WA 1746 & 1747 of 2000. Accordingly, we have vide our letter dated 24 February 2015 forwarded a copy of the CHPT communication dated 22 December 2014 and 8 February 2015 to the United Liner Agencies (India) Pvt. Ltd. and Parekh Marine Agencies Pvt. Ltd for their comments. We have not received the comments from these two parties, till the case was taken up for finalisation.

5. Based on preliminary scrutiny of the communication received from CHPT, the CHPT was requested to furnish the following documents while acknowledging its communication, vide our letter dated 16 January 2015. The CHPT vide its letter dated 8 February 2015 has responded. The details sought by us and the response of CHPT thereon are summarized below:

<table>
<tr><th>Sr. No.</th><th>Information sought by us</th><th>Reply of CHPT</th></tr>
<tr><td>(a).</td><td>With reference to the notification of CHPT dated 6 July 1994</td><td></td></tr>
<tr><td>(i).</td><td>Copy of the Scale of Rates of CHPT covering the Container Storage Charges that existed prior to 6 July 1994.</td><td>(From the copy of the SOR furnished by the CHPT, the relevant portion (Scale B, Chapter II A of 1992 edition) covering the Container Storage Charges that existed prior to 6 July 1994 is given below:
(a). Empty Containers:
<table>
<tr><td></td><td colspan="4">Rate per Container</td></tr>
<tr><td>Sr. No.</td><td>Classification</td><td>Upto 20 feet in length (₹)</td><td>Above 20 feet and upto 40 feet in length (₹)</td><td>Above 40 feet in length (₹)</td></tr>
<tr><td>(i).</td><td>For the first 7 days</td><td>20</td><td>40</td><td>60</td></tr>
<tr><td>(ii).</td><td>From 8th day to 14th day</td><td>40</td><td>75</td><td>120</td></tr>
<tr><td>(iii).</td><td>Thereafter</td><td>125</td><td>250</td><td>375</td></tr>
</table>
(b). Loaded Containers:
(i). Imports:
<table>
<tr><td></td><td colspan="4">Rate per Container</td></tr>
<tr><td>Sr. No.</td><td>Classification</td><td>Upto 20 feet in length (₹)</td><td>Above 20 feet and upto 40 feet in length (₹)</td><td>Above 40 feet in length (₹)</td></tr>
<tr><td>(i).</td><td>For the first 3 days</td><td>Free</td><td>Free</td><td>Free</td></tr>
<tr><td>(ii).</td><td>Next 4 days to 15 days</td><td>15</td><td>25</td><td>45</td></tr>
<tr><td>(iii).</td><td>Next 16 to 30 days</td><td>65</td><td>125</td><td>195</td></tr>
<tr><td>(iv)</td><td>Thereafter</td><td>125</td><td>250</td><td>375</td></tr>
</table>
(ii). Exports:
From the date following the date of admission by Rail or road or from the date following the date of stuffing of exports to the date of shipment.
<table>
<tr><td></td><td colspan="4">Rate per Container</td></tr>
<tr><td>Sr. No.</td><td>Classification</td><td>Upto 20 feet in length (₹)</td><td>Above 20 feet and upto 40 feet in</td><td>Above 40 feet in length (₹)</td></tr>
</table>
</td></tr>
</table>

			length (₹)	
(i).	For the first 3 days	Free	Free	Free
(ii).	Next 4 days to 30 days	15	25	45
(iii).	Next 31 to 45 days	25	50	75
(iv).	Thereafter	125	250	375

(ii). Proposal of CHPT submitted by it before its Board for approval of revised Container Storage Charges.

The Board during its Meeting held on 29.10.93, approved the revised container storage charges vide B.R. No.146. A copy of the proposal submitted to the Board for approval of the Container storage charges is furnished by the CHPT.

From the copy of the Agenda furnished by CHPT, the following position is seen :

a. Incase of Empty containers

- Existing

Sr. No.	Description	Upto 20 feet in length (₹)	Above 20 feet and upto 40 feet in length (₹)	Above 40 feet in length (₹)
(i).	For the first 7 days	20	40	60
(ii).	From 8th day to 14th days	40	75	120
(iii).	Thereafter	125	250	375

- Proposed

Sr. No.	Description	Upto 20 feet in length (₹)	Above 20 feet and upto 40 feet in length (₹)	Above 40 feet in length (₹)
(i).	For the first 3 days	20	40	60
(ii).	From 4th day to 7th days	100	200	300
(iii).	From 8th day to 15th days	500	1000	1500
(iv)	Thereafter	1000	2000	3000

b. Incase of Loaded FCL Import Containers

- Existing

Sr. No.	Description	Upto 20 feet	Above 20 feet	Above 40 feet

<table>
<tr>
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<td></td>
<td>
<table>
<tr><td></td><td></td><td>in length (₹)</td><td>and upto 40 feet in length (₹)</td><td>in length (₹)</td></tr>
<tr><td>(i).</td><td>For the first 3 days</td><td>Free</td><td>Free</td><td>Free</td></tr>
<tr><td>(ii).</td><td>From 4th day to 15th days</td><td>15</td><td>25</td><td>45</td></tr>
<tr><td>(iii).</td><td>From 16th day to 30th days</td><td>65</td><td>125</td><td>195</td></tr>
<tr><td>(iv)</td><td>Thereafter</td><td>125</td><td>250</td><td>375</td></tr>
</table>

- Proposed

<table>
<tr><td>Sr. No.</td><td>Description</td><td>Upto 20 feet in length (₹)</td><td>Above 20 feet and upto 40 feet in length (₹)</td><td>Above 40 feet in length (₹)</td></tr>
<tr><td>(i).</td><td>For the first 3 days</td><td>Free</td><td>Free</td><td>Free</td></tr>
<tr><td>(ii).</td><td>From 4th day to 15th days</td><td>500</td><td>1000</td><td>1500</td></tr>
<tr><td>(iii).</td><td>From 16th day to 30th days</td><td>2000</td><td>4000</td><td>6000</td></tr>
<tr><td>(iv)</td><td>Thereafter</td><td>7000</td><td>14000</td><td>21000</td></tr>
</table>
</td>
</tr>
<tr>
<td>(iii).</td>
<td>Copy of the proceeding, if any, conducted by the CHPT with the concerned users before revising the Container Storage Charges.</td>
<td>The Trade has been involved in various discussions with the Trust for a year on the urgent need to keep the Container Terminal free from congestion to receive vessels. After exhaustive discussions only, the Board comprising of the representatives from the Trade, in the meeting held on 26.10.93, approved the increased rates vide B. R. No.146.
In this regard, the CHPT has drawn reference to para 7 of the Counter Afflidavit filed by it in WP no. 11747. The relevant portion of para 7 of the Counter Affidavit is reproduced below:
“In the circumstances, the enhancement made in respect of empty containers as well as loaded containers presuming the existing rates for FCI containers destuffed or cleared within seven days and LCL containers for imports and the loaded containers for export. Before the Board considering and deciding the enhancement, the trade was involved in various discussions on the urgent need to keep the container terminal free from congestion. The writ petitioner themselves have admitted that 2000 containers are lying in the port pending clearance. After exhaustive discussions, the Board comprising of the</td>
</tr>
</table>

		representations of the Trade and all other interests approved the increase at its meeting held on 26.10.1993. The revised rates was sanctioned by the Central Government and became effective on publication in the official Gazette on 6.07.1994. The petitioner has filed the above writ petitions challenging the notification enhancing the rates in respects of empty containers as well as loaded containers. It is respectfully submitted that the enhancement was resorted to reduce congestion in the Container Terminal and in the national, public and port user's interest. It is submitted that the amendment of the rates is legal, valid and within power vested upon the Board and the Government under the statute. It is respectfully submitted that none of the allegations and contentions raised in the writ petitions is tenable. It is reiterated that the Container transport is intended to help fast transportations. The Containers moved within seven days do not face the liability of enhancement. It is only the defaulters by whose default the functioning of the conditioner terminal is jeopardized, would have to face the increase dependent on the extent of delay. This would not affect the genuine interests of those whose containers move out within the allowed free periods. As the liability of increased rate is only on the defaulters the allegation that the increase is arbitrary or unreasonable is untenable."
(iv).	Copy of the Minutes of the Board of Trustees approving the proposal of CHPT for revision of Container Storage Charges.	A copy of the Minutes of the meeting held on 29.10.93 is furnished by the CHPT, and as mentioned in the minutes of Board. "Read the Chairman's note dated the 27th October 1993, proposing amendments to the Scale of Rates, enhancing the rate for storage charges for empty containers and FCL Containers and to levy a new rate of charges for shutout containers to bring about a sense of urgency on the part of container operators, to take special steps to remove the containers in the shortest possible time from the container terminal, as proposed in paras 4, 5, and 6 of the Chairman's note. Resolved, after discussion, to approve of the amendments to the Trust's Scale of Rates enhancing the rates of storage charges for empty containers and FCL containers and to levy of new rate of charges for shut out containers."
(v).	Copy of the proposal of the CHPT sent to the concerned Ministry in the Government of India for approval of the proposal of CHPT for revision of Container Storage Charges.	After approval of the Board, the proposal was forwarded to the Ministry for approval vide letter dated 29.1.94. The Ministry vide its letter No.PR-14012/9/94-PG dated 6/9th May 1994 has sanctioned the revised rates, a copy of which is furnished by the CHPT.
(vi).	Copy of the approval of the concerned Ministry in the Government of India conveyed for revision of Container Storage Charges.	

<table>
<tr><td>(vii).</td><td>Copy of the Gazette Notification.</td><td>A copy of the Gazette Notification dated 6.7.94 is furnished by the CHPT. The revised container storage charges is given below:

- Empty Containers
<table>
<tr><td></td><td colspan="4">Rate per Container per day or part there of</td></tr>
<tr><td>Sr. No.</td><td>Classification</td><td>Upto 20 feet in length (₹)</td><td>Above 20 feet and upto 40 feet in length (₹)</td><td>Above 40 feet in length (₹)</td></tr>
<tr><td>(i).</td><td>For the first 7 days</td><td>20</td><td>40</td><td>60</td></tr>
<tr><td>(ii).</td><td>Next 8th to 15th days</td><td>500</td><td>1000</td><td>1500</td></tr>
<tr><td>(iii).</td><td>Thereafter</td><td>1000</td><td>2000</td><td>3000</td></tr>
</table>

- Loaded FCL Import Containers (cleared after 7 days)
<table>
<tr><td></td><td colspan="4">Rate per Container per day or part there of</td></tr>
<tr><td>Sr. No.</td><td>Classification</td><td>Upto 20 feet in length (₹)</td><td>Above 20 feet and upto 40 feet in length (₹)</td><td>Above 40 feet in length (₹)</td></tr>
<tr><td>(i).</td><td>For the first 3 days</td><td>Free</td><td>Free</td><td>Free</td></tr>
<tr><td>(ii).</td><td>Next 4th to 15th days</td><td>500</td><td>1000</td><td>1500</td></tr>
<tr><td>(iii).</td><td>From 16th to 30th days</td><td>2000</td><td>4000</td><td>6000</td></tr>
<tr><td>(iii).</td><td>Thereafter</td><td>7000</td><td>14000</td><td>21000</td></tr>
</table>
</td></tr>
<tr><td>(b).</td><td>With reference to the notification of CHPT dated 19 July 1995</td><td></td></tr>
<tr><td>(i).</td><td>Copy of the proceeding, if any, conducted by the CHPT with the concerned users/organization bodies before revising the Container Storage Charges.</td><td>The Board in its meeting held on 27 July 1994 constituted a Sub Committee to go into the question of hike in the rates of container storage charges, comprising of the Trustees, Representatives of User Agencies and Officers of the Trust. A copy each of the Agenda Note placed before the Board and Extract of the Minutes of the meeting is furnished by the CHPT.</td></tr>
<tr><td>(ii).</td><td>Proposal of CHPT submitted by it before its Board for approval of revised Container Storage Charges.</td><td>The Sub-Committee submitted its report dated 11.8.1994. From the copy of the Sub-committee report furnished by the CHPT, it is seen that based on detailed discussions and keeping in mind the charges levied at Bombay and Calcutta ports, the following storage charges were felt fair and reasonable by the Sub-committee:

(i). Empty Container:</td></tr>
</table>

	Storage/Demurrage on container/cargo to port			
Sr. No.	Classification	Upto 20 feet in length (₹)	Above 20 feet and upto 40 feet in length (₹)	Above 40 feet in length (₹)
(i).	1-7 days	20	40	60
(ii).	8th to 15th days	100	200	300
(iii).	Thereafter	500	1000	1500

(ii). Loaded Containers:

	Storage/Demurrage on container/cargo to port			
Sr. No.	Classification	Upto 20 feet in length (₹)	Above 20 feet and upto 40 feet in length (₹)	Above 40 feet in length (₹)
(i).	1-3 days	Free	Free	Free
(ii).	4th to 15th days	15	25	45
(iii).	16th to 30 days	300	600	900
(iv)	Thereafter	1000	2000	3000

(iii). Shut Out Charges:

	Storage/Demurrage on container/cargo to port			
Sr. No.	Classification	Upto 20 feet in length (₹)	Above 20 feet and upto 40 feet in length (₹)	Above 40 feet in length (₹)
		1000	2000	3000

(iv). Removal Charges:

	Storage/Demurrage on container/cargo to port			
Sr. No.	Classification	Upto 20 feet in length (₹)	Above 20 feet and upto 40 feet in length (₹)	Above 40 feet in length (₹)
		500	750	1000

iv). Extra Movement Charges at CPY:

<table>
<tr>
<td></td>
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<td>
<table>
<tr><td></td><td colspan="4">Storage/Demurrage on container/cargo to port</td></tr>
<tr><td>Sr. No.</td><td>Classification</td><td>Upto 20 feet in length (₹)</td><td>Above 20 feet and upto 40 feet in length (₹)</td><td>Above 40 feet in length (₹)</td></tr>
<tr><td></td><td></td><td>500</td><td>750</td><td>1000</td></tr>
</table>

The Committee also recommended that till a decision is taken on the proposed rates by the Port Trust, the existing old rates may be applied and not the recently enhanced rates.
Based on the report submitted by the Sub-Committee, a proposal was placed before the Board in its meeting held on 17 August 1994.
The Board vide B.R.No.112 approved the recommendations of the Sub-Committee for revision of container storage charges. Further, in the same meeting, based on a note of Chairman dated 16 August 1994 seeking sanction of Board for interalia, notifying the rates for storage charges on containers in US dollars, the Board vide B.R. No.113, interallia approved the revised container storage charges in U.S.Dollars, in respect of empty containers / FCL containers / shut out containers etc.
</td>
</tr>
<tr>
<td>(iii).</td>
<td>Copy of the Minutes of the Board of Trustees approving the proposal of CHPT for revision of Container Storage Charges.</td>
<td>A copy of the Minutes of the Board of Trustees' Meeting held on 17.8.94 is furnished by the CHPT. As stated above, the Board vide B.R.No.112 approved the recommendations of the Sub-Committee for revision of container storage charges. Further, in the same meeting, based on a note of Chairman dated 16 August 1994 seeking sanction of Board for interalia, notifying the rates for storage charges on containers in US dollars, the Board vide B.R. No.113, interalia approved the revised container storage charges in U.S.Dollars, in respect of empty containers / FCL containers/ shut out containers etc.</td>
</tr>
<tr>
<td>(iv).</td>
<td>Copy of the proposal of the CHPT sent to the concerned Ministry in the Government of India for approval of the proposal of CHPT for revision of Container Storage Charges.</td>
<td>A copy of the letter dated 24.8.2014 addressed to the Ministry of Surface Transport is furnished by CHPT. The CHPT in its letter has sought sanction of the Government for the cancellation of the rates already published in the Tamil Nadu Govt. Gazette dated 6.7.94 u/s 54 of the MPT Act, since the above rates could not be implemented due to Court's stay order.
Sanction of the Government has also been sought for the revised rates for storage of FCL containers and Empty containers in terms of US Dollars and the rates for shut-out containers under sec.52 of the Major Port Trust Act 1963. The letter to Government also states that on receipt of sanction of the Government, the revised rates will be</td>
</tr>
</table>

<table>
<tr><td></td><td></td><td>published in the Tamil Nadu Government Gazette to take effect from the date of publication.</td></tr>
<tr><td>(v).</td><td>Copy of the approval of the concerned Ministry in the Government of India conveyed for revision of Container Storage Charges.</td><td>The Ministry vide its letter No.PR-14012/31/94-PG dated 4 July 1995 conveyed its approval for B.R. No.113 dated 17.8.94 and conveyed the sanction of the Central Government under section 52 of the Major Port Trusts Act, 1963 to the proposal contained in the Trustees Resolution No. 113 dated 17 August 1994, except in respect of storage charges for FCL containers beyond 30th day. The storage charges for FCL containers beyond 30th day was precribed as under.
<table>
<tr><td>20’</td><td>20’-40’</td><td>Above 40’</td></tr>
<tr><td>₹</td><td>₹</td><td>₹</td></tr>
<tr><td>US $</td><td>US $</td><td>US $</td></tr>
<tr><td>2000</td><td>4000</td><td>6000</td></tr>
<tr><td>95.20</td><td>190.40</td><td>285.60</td></tr>
</table></td></tr>
<tr><td>(vi).</td><td>Copy of the Gazette Notification.</td><td>A copy of the Gazette Notification dated 19.7.95 is furnished by the CHPT. Thus, the revised container storage charges were as follows:
(i). Empty Container:
<table>
<tr><td></td><td>Upto 20’</td><td>Above 20’-40’</td><td>Above 40’</td></tr>
<tr><td></td><td>US $</td><td>US $</td><td>US $</td></tr>
<tr><td>For the first 7 days</td><td>0.95</td><td>1.91</td><td>2.86</td></tr>
<tr><td>From 8 to 15 days</td><td>4.76</td><td>9.52</td><td>14.28</td></tr>
<tr><td>Thereafter</td><td>23.80</td><td>47.60</td><td>71.40</td></tr>
</table>
(ii). Loaded FCL Import Container (cleared within 7 days) :
<table>
<tr><td></td><td>Upto 20’</td><td>Above 20’-40’</td><td>Above 40’</td></tr>
<tr><td></td><td>US $</td><td>US $</td><td>US $</td></tr>
<tr><td>For the first 3 days</td><td>Free</td><td>Free</td><td>Free</td></tr>
<tr><td>Next 4 to 15 days</td><td>0.72</td><td>1.19</td><td>2.14</td></tr>
<tr><td>Next 16 to 30 days</td><td>3.10</td><td>5.95</td><td>9.28</td></tr>
<tr><td>Thereafter</td><td>5.95</td><td>11.90</td><td>17.85</td></tr>
</table>
* The Notification also, inter alia, states that the rates of storage charges published in Tamil Nadu Government Gazette dated 6 July 1994 are cancelled in view of the said Notification and the storage charges are substituted with effect from 6 July 1994.
(iii). Loaded FCL Import Container (cleared after 7 days) :
<table>
<tr><td></td><td>Upto 20’</td><td>Above 20’-40’</td><td>Above 40’</td></tr>
<tr><td></td><td>US $</td><td>US $</td><td>US $</td></tr>
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<tr><td>(c).</td><td>A Note on the circumstances that led to revision of Rupee denominated Container Storage Charges to US $ denominated Container Storage Charges with supporting documents.</td><td>The CHPT has furnished a Note in this regard. (However, the Note stresses upon the need felt by the CHPT to increase the storage charges and does not throw light upon the circumstance that led to revision of Rupee denominated containers storage charges to US $ denominated charges).</td></tr>
<tr><td>(d).</td><td>The Annex-III of the CHPT letter dated 22 December 2014 being the Order dated 28 August 2000 passed by the Hon'ble High Court of Madras is not legible. The CHPT is, therefore, requested to furnish a legible copy of the said Order.</td><td>A legible copy of the Order dated 28.8.2000 is furnished by the CHPT.</td></tr>
<tr><td>(e).</td><td>The copy of notification dated 19 July 1995 (attached as Annex II to CHPT letter dated 22 December 2014) shows prescription of Dwell time for containers and storage charges thereon in US$ terms. However, in the copy of the Order of the Hon'ble High Court of Madras dated 28 August 2000 (attached as Annex III to CHPT letter dated 22 December 2014), at page 30 of the said Order, which reflects rates prior to 6 July 1994 and after the two notifications of 6 July 1994 and 19 July 1995, the charges are shown to be prescribed in Rupee terms. Infact, in the entire Order of the Hon'ble Court, there is no reference to prescription of charges in US$ terms. The CHPT is, therefore, requested to clarify the position.</td><td>The Scale of Rates prior to 6.7.1994 prescribed container storage charges in Rupee terms only. The ChPT vide Notification dated 6.7.1994 increased the container storage charges. However, the container storage charges were prescribed in rupee terms only.

Subsequently, based on the recommendations of the subcommittee constituted by the Board, the increased container storage charges notified on 6.7.94 was reduced and approved by the Board vide B.R. No.112 dated 17.8.94. The revised rates approved vide B.R. No.112 also prescribed the container storage charges in rupee terms.

However, in the same Board meeting held on 17.8.94, the vide B.R. No.113 approved the prescription of the container storage charges in U.S.Dollar terms, converted based on the revised rates approved vide B.R. No.112. The same was conveyed to the Ministry vide our letter dated 24.8.94, wherein, it has been mentioned that the Board in B.R. No.113 approved the proposed rates recommended by the subcommittee, but converted in U.S. Dollars.

The Ministry of Surface Transport vide its letter dated 4.7.1995 conveyed its approval for B.R. No.113. Accordingly, the revised rates approved vide B.R. No.113 was notified in the Tamil Nadu Gazette on 19.7.95. The Notification dated 19.7.95 prescribed the container storage charges in U.S.Dollar terms only.

In view of the above, it is stated that the Writ Petition No.11747 of 1994 was filed by MSAA challenging the notification dated 6.7.94 (in rupee terms). Since the subject matter of the Writ</td></tr>
</table>

		Petition was the substantial increase in container storage charges, the issue of conversion of container storage charges into US Dollar terms may not have been dealt with in the Order dated 28.8.2000. Further, with regard to the comparison of rates appearing in page 30 of the Order, it is felt that for convenience of comparison, the revised container storage charges recommended by the Subcommittee may have been taken, since these rates have been converted into U.S. Dollar terms and notified on 19.7.95.
(f).	As the CHPT may be aware, the Hon'ble High Court has directed this Authority to decide on the issue of revision of charges within a period of six months from 8 October 2014. Considering that the CHPT has communicated this position to this Authority vide its letter dated 22 December 2014, it is to be seen that almost a period of two and half months has already elapsed after passing of the Order by the Hon'ble Court and only three and half months are available with this Authority to dispose of the matter, inorder to comply with the direction of the Hon'ble Court. Therefore, the CHPT is requested to furnish the requisite information latest by 27 January 2015, so as to enable us proceed further in the matter in reference.	It is a fact that the High Court has passed an Order on 8 October 2014 directing TAMP to decide the issue. However, the Order passed on 8 October 2014 has been issued by the Court only on 24.11.2014. Thereafter, the Trust LA has forwarded a copy of the above Order to ChPT only on 25.11.2014. In this process itself more than one and half months have elapsed. However, on receipt of High Court Order from the Trust LA, action was taken to refer the matter to TAMP and a proposal was prepared and submitted to TAMP in person on 24.12.2014. Hence, TAMP is requested to process the case on priority and the Port will extend its fullest co-operation in this regard.
(g).	The Division Bench of Hon'ble High Court of Madras have directed this Authority to complete the task after putting parties to notice. Therefore, the CHPT letter dated 22 December 2014 along with enclosure is circulated to the users / organization bodies as mentioned in the list enclosed, as listed in the Order dated 8 October 2014 passed by the Hon'ble Division Bench. Further, since the Ministry of Shipping (MOS) is also seen to be one of the Respondents in the Writ Appeal filed by CHPT, a copy of the CHPT letter dated 22 December 2014 along with enclosure is also circulated to MOS for their comments.	The CHPT has stated to have noted the position.

6.1. The CHPT was, *inter alia*, requested vide our letter dated 19 February 2015 to furnish working / cost details to arrive at the rate of container storage charges pertaining to the notification of the CHPT dated 6 July 1994 and 19 July 1995.

6.2. In this regard, the CHPT vide its email dated 30 March 2015 has, *inter alia*, stated that the enhancement of container storage charges was resorted to mainly with a view to prevent storage of containers in the port premises for a long period and to penalize the containers which are not taken out of port premises within the free time. Further, the storage charge is not a fee, it is in the nature of ground rent and it has penal connotation. The revised container storage charges were arrived by the Sub Committee of the Board of Trustees (in its report dated 11 August 1994, copy of which is already furnished to TAMP) and then approved by the Board / Government and no other workings / cost details are available. With reference to conversion of container storage charges into US Dollar terms, it is stated that the Government of India vide Letter No.14012/16/9.1-PG dated 3 August 1994 directed the Chairmen of all Major Ports that the existing storage and container charges be notified in U.S. Dollars and realized in equivalent Indian Rupees and that such conversion be made on the basis of exchange rates prevalent on 30.6.1991. Accordingly, the container storage charges arrived by the Sub Committee of the Board, were converted into US Dollar terms and approved by the Board vide B.R. No.113 dated 17 August 1994.

6.3. Based on scrutiny of the CHPT communication dated 8 February 2015 along with the annexures, we have vide our letter dated 27 March 2015 requested the CHPT to furnish the following additional information/clarification. The CHPT vide its letter dated 31 March 2015 has responded. The information sought by us and the response of CHPT thereon are tabulated below:

Sl. No.	Information sought by us	Response of CHPT
i.	After revision of the Container storage charges on 6.7.1994, the CHPT is seen to have approached its Board, who in turn had decided to constitute a Subcommittee to go into the question of hike in rates. The CHPT to explain the reason to have again approached its Board, when the revision of storage charges on 6.7.1994 was carried out after seeking approval of the Board.	The increased container storage charges notified by the ChPT on 6.7.94 was challenged by the Madras Steamer Agents Association through W.P. No.11747 of 1994, in which the Hon'ble Court granted interim stay. In view of the stay granted by the Hon'ble Court, the container storage charges notified on 6.7.94 could not be implemented. The main ground of challenge by the Petitioner was exorbitant increase in the then existing container storage charges. When the matter was placed before the Board for further course of action, the Board constituted a Subcommittee to recommend further course of action in this regard.
ii.	In page 6 of the Annexure VIII furnished by the CHPT under cover of its aforesaid letter dated 8 February 2015, at Resolution no.113, a reference is drawn to the Note of Chairman dated 16 August 1994 seeking sanction of Board for notifying the rates for storage charges on container in US Dollars. The CHPT to furnish a copy of the said note of the Chairman dated 16.8.1994.	A copy of the Chairman's note dated 16 August 1994 is furnished by CHPT. (The Note of the Chairman concludes by stating that the Board may discuss the recommendations of the Sub-committee and decide the revision of charges and other points as suggested by the Committee in its Report).
iii.	The copy of the Order dated 17 September 2014 passed by the Hon'ble High Court of Madras in the matter in reference (as referred by the Hon'ble Court in its Order dated 8 October 2014) to be furnished.	A copy of the docket order dated 17.9.2014 is furnished by CHPT (The operative portion of the Order is reproduced below: "The endeavor of the Chennai Port Trust to revise the storage charges through a notification published in the Gazette on 06 July 1994 as well as subsequent revision vide notification dated 19.07.1995 gave rise to writ proceedings and by the impugned order, the revision has been quashed on the ground that it is not commensurate with the services rendered and exorbitantly high. It has been opined that there is no proper consideration by the sub-committee of these aspects, but leave has been granted to the Trust to revise the rates appropriately after due consideration. There are no cross appeals. It is further informed that this issue for subsequent years does not arise on account of Section 47-A of the Major Port Trusts Act,

<table>
<tr><td></td><td></td><td>1963, inserted by Act, 15, 1997, effective from 09.01.1997 conceptualising the statutory committee.

2. There is no gainsay that there will be some revision, but it is the extent of revision which is in question. We thus, put to the learned counsel for the parties that in order to avoid further litigation in this behalf, as also keeping in mind, the passage of time which is already gone by, whether it would be agreeable to refer this issue of revision of charges to the statutory committee which of course came into existence subsequently, in order to put an end to this.”)</td></tr>
<tr><td>iv.</td><td>The CHPT to specify whether General revision of its tariff had taken place during the years 1994 to 2000. If so, the percentage of increase/decrease that was effected in the cargo / container related charges of the port as a whole by the Competent Authority at that relevant point of time may be indicated. A copy of the Gazette Notification in this regard may be furnished including the notified Scale of Rates.</td><td>There was no general revision of tariff at CHPT from the year 1994 to 1999. During the year 2000, the general revision of tariff was approved by TAMP vide its Order dated 22 March 2000 (Case No.TAMP/3/99-CHPT), which was notified in the Gazette on 10 April 2000 vide Gazette No.37. The percentage increase proposed by the ChPT and approved by TAMP in the cargo / container activity, in this Order are tabulated below:
<table>
<tr><th>Activity/Sub Activity</th><th>Proposed % of Increase</th><th>% Approved by TAMP</th></tr>
<tr><td>General Cargo</td><td>25%</td><td>18%</td></tr>
<tr><td>Cranage & FLT</td><td>100%</td><td>100%</td></tr>
<tr><td>F.C. Vaigai</td><td>50%</td><td>50%</td></tr>
<tr><td>Ware House</td><td>50%</td><td>50%</td></tr>
<tr><td>P.O.L.</td><td>10%</td><td>---</td></tr>
<tr><td>Iron Ore</td><td>100%</td><td>40%</td></tr>
<tr><td>Container Handling</td><td>40%</td><td>---</td></tr>
</table></td></tr>
</table>

7.1. The Subcommittee formed by the Board of the CHPT in 1995 in its Report is seen to have drawn reference to the Scale of Rates of Mumbai Port Trust (MBPT) and Kolkata Port Trust (KOPT) while recommending the container storage charges. Hence, it was felt appropriate to ascertain the position prevailing in SOR of MBPT and KOPT as well as the other major container handling ports. Accordingly, we have vide our letter dated 31 March 2015 requested some of the major container handling Major Port Trusts to send the relevant extract of their Scale of Rates reflecting the Container Storage charges that had prevailed between 1994 to 2000.

7.2. In this response, Kandla Port Trust, Mumbai Port Trust, Jawaharlal Nehru Port Trust, Visakhapatnam Port Trust**,** Cochin Port Trust Tuticorin Port Trust (VOCPT) and Kolkata Port Trust have sent the information. A comparative position of the container storage charges as reflected in the Scale of Rates prevailing between 1994 to 2000 of the above Major Port Trusts will be sent separately to the relevant parties. These details will also be made available at our website http://tariffauthority.gov.in.

8.1. A joint hearing in this case was held on 6 April 2015 at the CHPT premises in Chennai. The CHPT made a Power point presentation on the matter in reference. At the joint hearing, the CHPT and the concerned parties have made their submissions.

8.2. As decided at the joint hearing, the parties were requested vide our letter dated 8 April 2015 to furnish their additional submission, if any, on the subject proposal. In response, Madura Coats Pvt. Ltd (MCPL) vide its letter dated 18 April 2015 and CEPSAA & SCI vide its letter dated 24 April 2015 have made their submissions. These submissions were forwarded to CHPT as feedback information. The CHPT, vide its letter dated 5 May 2015 and 6 May 2015 has furnished its reply on written submissions of the parties. It is relevant to mention here that the CHPT while responding to the comments of MCPL vide its letter dated 5 May 2015 has endorsed a copy of its comments to MCPL also. Accordingly, the MCPL in turn, vide its letter dated 9 May 2015 has responded to the comments of CHPT.

8.3. In response to the MCPL letter dated 9 May 2015, the CHPT vide its letter dated 22 May 2015 has stated that they have no comments to offer as they have already furnished their comments.

9.1. In the meanwhile, it is relevant here to mention that the time period of six months given by the Hon'ble High Court of Madras was getting over by 7 April 2015. Accordingly, we have vide our letter dated 6 April 2015 requested our Advocate to apprise the Hon'ble High Court of the position before 7 April 2015 and file an application on our behalf, to seek a further time of maximum 12 weeks from 7 April 2015 from the Hon'ble High Court to dispose the CHPT matter in reference.

9.2. In this regard, our Advocate vide his letter dated 28 April 2015 has stated that he had mentioned the case before the Division Bench of the Hon'ble Court. Based on the observation and consideration of the Hon'ble Court, our Advocate has stated that since the word used in the Order of the Hon'ble Court dated 8 October 2014 is "endeavour", it shows that it is not a conditional order. Therefore, the Advocate was of the view that we can proceed with the case at the earliest.

10. As brought out earlier, the CHPT had initially vide its letter dated 22 December 2014 requested this Authority to pass necessary order for recovery of the Container storage charges for the period from 6.7.1994 to 21.11.2000, as per the Correction Slip No 9 dated 6.7.1994 issued by the CHPT. (The Correction Slip No 9 dated 6.7.1994 referred by the CHPT relates to the initial increase in the container storage charges effected by the CHPT).

Subsequently, while responding to the submissions made by one of the parties viz., Chennai and Ennore Ports Steamer Agents Association (CEPSAA), the CHPT vide its letter dated 03 February 2015 has stated that the proposal of the Port is to approve the charges as approved by the Board vide B.R. No.112 and 113 dated 17 August 1994. (The B.R. No.112 and 113 dated 17 August 1994 referred by the CHPT relates to the approval given by the Board for revision of container storage charges as per the recommendations of the Sub-Committee and for prescription of rates for storage charges on containers in US dollars, respectively.

Thus, in a nutshell, the proposal of the port is for seeking approval of the following:

Sl. No.	**Particulars**	**(in US$)**		
		20'	***40'***	***Above 40'***
1	**Empty Containers**			
	1st 7 days	0.95	1.91	2.86
	8 – 14 days	4.76	9.52	14.28
	Thereafter	23.80	47.60	71.40
2	**Loaded Containers (cleared after 7 days)**			
	1st 3 days	Free	Free	Free
	4 – 15 days	0.72	1.19	2.14
	16 – 30 days	14.28	28.56	42.84
	Thereafter	95.20*****	190.40*****	285.60*****

***** Though the CHPT had sought approval of the Ministry for the rates as recommended by the Sub-committee denominated in US Dollars, the Government while according approval has considered the rates for the Loaded containers beyond the 30^{th} day as ₹ 2000/- for a 20', ₹ 4000/- for 40' and ₹ 6000/- for Above 40' and notified the Dollar denominated tariff accordingly.

11. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and 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

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

(i). This Authority was constituted in April 1997 by an amendment to the Major Port Trusts Act, 1963 to frame Scale of Rates at which, and a statement of conditions under which, any of the services specified under Section 48 provided by the Major Port Trusts or any other person authorized under Section 42 at or in relation to the Port or port approaches. One of the services listed under Section 48 is storage or demurrage of goods on any such place within the limits of the port or port approaches. This Authority is also mandated under Section 49 of the Act to frame Scale of Rates and statement of conditions for use of property belonging to the Major Port Trusts. Before amendment to the Act, the Major Port Trusts were realizing charges for services rendered and for use of port property in accordance with the rates proposed by the Major Port Trust, approved by the Board of Trustees and sanctioned by the Union Government.

(ii). Prior to handing over of the container terminal in November 2001 to the Chennai Container Terminal Private Limited (CCTPL), a BOT (Build, Operate, Transfer) operator at the CHPT, the CHPT was handling containers, apart from other major cargo items like Dry Bulk Cargo (Food grains, iron ore, coal fertilizers etc.), Liquid Bulk (Crude oil, Petroleum Products etc.,) and Break Bulk (Sugar, Project cargo etc.,) and other miscellaneous cargo category.

(iii). The 1992 edition of the Scale of Rates of the CHPT prescribed charges for container storage, among other charges for various cargo items. Prior to 6 July 1994, the container storage charges were denominated in Indian Rupee terms. In July 1994, the CHPT enhanced the container storage charges revising the relevant entries in the Scale of Rates of 1992. The denomination of container storage charges in Indian Rupee terms was retained in July 1994. The Chennai Steamer Agents Association (CSAA) challenged the enhancement of storage charges in the Hon'ble High Court of Madras and obtained a stay in July 1994. Therefore, the CHPT desired to review the matter and appointed a sub-committee comprising of few Trustees and user Associations, among others to go into the question of hike in storage charges of Fully Loaded Container (FCL), among other container related tariff items. The sub-committee moderated the rates and was approved by the Board of the CHPT in August 1994. The rates were denominated in US $. The then Ministry of Surface Transport conveyed its approval in July 1995 for the moderated rates. The CHPT substituted the reduced rates by its notification in the Gazette on 19 July 1995 with effect from 6 July 1994. The 19th July 1995 notification was also challenged by the CSAA in the Hon'ble High Court of Madras. The Hon'ble Single Judge quashed both the notifications of CHPT by Order dated 28 August 2000 without prejudice to the right of the CHPT to prescribe reasonable increase in the rates after taking the relevant materials into consideration and after giving an opportunity to the concerned parties. The Order also directed CHPT to refund any amount collected in excess. Aggrieved by the Order of the Single Judge, the CHPT went on appeal before the Division Bench to set aside the Order dated 28 August 2000 passed by the Hon'ble Single Judge. The Hon'ble Division Bench in the interim order dated 22 November 2000 stayed the Order of the Hon'ble Single Judge which directed refund of the amount and collecting the arrears as per the new rates. The Hon'ble Division Bench, however, directed the concerned to pay the rates as per the revised tariff from 22 November 2000. Thereafter, by the Common Judgment dated 9 October 2014, the Hon'ble Division Bench has referred the issue of extent of revision of charges, if any, for the period from 06 July 1994 to August 2001 to this Authority with the consent of the Appellants after putting the parties to notice, even recognizing that the constitution of this Authority was later to July 1994. The direction of the Hon'ble High Court is binding on this Authority, though this Authority was constituted in April 1997 only.

(iv). Accordingly, in order to put the parties on notice, the prescribed consultation proceeding was initiated. A copy of the CHPT communication dated 22 December

2014 along with the enclosures was made available to the parties. The container storage charges leviable under the challenged notification of the CHPT for the container handled during the period in question formed part of the CHPT communication dated 22 December 2014, in the form of firm-wise details of container storage charges leviable as per the notification dated 19 July 1995, as confirmed by the CHPT.

(v). The CHPT had issued two notifications, one on 06 July 1994 revising the storage charges for empty containers and FCL containers, among other charges, and another notification on 19 July 1995 substantially reducing the increase notified on 6 July 1994. The notification dated 19 July 1995 was based on the Resolution No. 112 and 113 dated 17 August 1994 of the Board of Trustees of CHPT. On the ground that the Hon'ble Single Judge of the High Court of Madras had set aside the two notifications and the Order of Hon'ble Division Bench had not set aside the findings of Hon'ble Single Judge the CSAA requested this Authority to direct the CHPT to file a fresh proposal before this Authority for revision of the tariff for the period in question. When the request of the CSAA was conveyed to the CHPT, the port has submitted that the proposal of the port is for approval of the storage charges in US $ terms for empty containers and FCL (cleared after 7 days) approved by its Board of Trustees by Resolution No. 112 and 113 dated 17 August 1994. Resolution No. 112 relates to moderation of storage charges for empty containers. It also relates to moderation of storage charges of loaded containers (FCL) cleared after seven days corresponding to the entry at Serial No. 2 (Loaded Containers), III in the Scale of Rates of CHPT of 1992 Edition. The resolution No. 113 relates to denomination of charges in US $ terms. The port has pleaded its inability to prepare a fresh proposal. The port has contended that it is for this Authority to examine the entire case independently and issue orders as per the order of the Hon'ble Division Bench. Since the CHPT has categorically stated that its proposal is to go ahead with the Board Resolution of 17 August 1994, it may not be appropriate for this Authority to reject the Resolutions No. 112 and 113 dated 17 August 1994. Therefore, the Resolution No. 112 and 113 dated 17 August 1994 is considered as the proposal of the CHPT.

(vi). With reference to the request made by the MCPL to the CHPT to make available the container storage charges leviable under the orders set aside by the Hon'ble Single Judge, for the containers handled during the period in question, as rightly pointed out by the CHPT, the communication dated 22 December 2014 of the CHPT a copy of which was circulated to the parties, contained the firm-wise details of the container storage charges leviable as per the CHPT notification dated 19 July 1995. As regards the actual cost incurred by the CHPT for rendering the storage services, as sought by the MCPL, the cost incurred by the CHPT is not relevant, in the opinion of the CHPT, since the container storage charges is not a fee for the services rendered; it is in the nature of ground rent for the space occupied by the containers and it has a penal connotation. This response of the CHPT is not acceptable to the MCPL. The MCPL has stated that the details of cost of providing the service and the extent of levy of container storage charges levied by other Major Port Trusts must be made available to this Authority. Though the cost of providing the storage services was the contentious issue in the High Court proceedings and the consultations proceedings conducted by this Authority, no such cost details were made available to this Authority. As regards the information regarding levy of storage charges by other Major Port Trusts, we have collected the container storage charges levied by the other major container handling ports, in different slab periods and considered in this analysis.

(vii). This Authority is required, as per the directions of the Hon'ble Division Bench, to put the parties to notice before completing the task. Accordingly, the prescribed consultation process was initiated, as stated earlier. A copy of CHPT communication dated 22 December 2014 was circulated among the parties. This Authority facilitated the exchange of written arguments between the parties and the CHPT. A joint hearing with the CHPT and the parties was set up at the CHPT premises. The CHPT and the parties made their arguments, at the joint hearing which were taken on record. The CSAA was permitted to be represented by its legal counsel at the joint hearing.

The CSAA has sought to argue in its letter dated 7 February 2015 that the Hon'ble Single Judge has struck down the CHPT notifications and the Hon'ble Division Bench had only stayed the direction given by the Single Judge to refund the amount. The CSAA also argued that that the Hon'ble Division Bench has not set aside the findings of Single Judge and the CHPT cannot refer to the tariff unilaterally fixed by it, and CHPT has to submit a fresh proposal. The above said arguments were again made by the Legal Counsel representing the CSAA at the joint hearing held on 6 April 2015. The CSAA has again reiterated its arguments made in its letter dated 7 February 2015 and the arguments made at the joint hearing by way of another letter dated 24 April 2015. In its letter dated 24 April 2015, the CSAA sought for a personal hearing. The CSAA has not brought out any new issues in its letter dated 24 April 2015. The said letter has also not brought out any extraordinary circumstances warranting another hearing. The CSAA has already been heard through its legal counsel at the joint hearing held on 6 April 2015.

At this juncture, it would be expedient to ponder upon some arguments advanced by the CSAA regarding the judgments of the Hon'ble Single Judge of the Madras High Court and Hon'ble Division Bench of the Madras High Court. The CSAA vide its letter dated 07 February 2015 and during the joint hearing proceedings held on 06 April 2015 and subsequently followed by another letter dated 24 April 2015 repeatedly and vehemently contended to mean that the Hon'ble Single Judge has struck down the CHPT notifications and the Hon'ble Division Bench had only stayed the direction given by the Single Judge to refund the ***excess*** amount, and the Hon'ble Division Bench of Madras High Court has not set aside the findings of the Hon'ble Single Judge. It is amply made clear here that it is not for this Authority to go into the effect of the judgments of the Hon'ble Madras High Court, since this Authority undertook the exercise of revision of container storage charges for the period from 06 July 1994 to August 2001, in compliance of the direction of the Hon'ble Division Bench of the High Court of Madras. As such, this Authority is not at all in a position to look into the arguments advanced by the CSAA regarding the effects of the Orders of the Hon'ble Single Judge and Division Bench of the Madras High Court, but to comply with the Order of the Hon'ble Division Bench of Madras High Court.

(viii). While the MPCL has argued as a consignee that container storage charges should not be levied on the consignee, the GSAPL and KSAPL have argued that steamer agents should not be penalized for the default of the consginees in taking delivery of the imported cargo. The issue referred by the Hon'ble Division Bench to this Authority is limited to the extent of revision of container storage charges, if any, at the CHPT for the period from 6 July 1994 to August 2001. Therefore, this Authority does not like to traverse beyond the mandate of the Division Bench.

(ix). Drawing reference to Section 61 of the Major Port Trusts Act, 1963, the GSAPL and KSAPL have sought to argue that the CHPT cannot impose any charges until expiry of two months. Section 61 of the said Act governs sale of goods after two months if rates or rent are not paid or lien for freight is not discharged. The said provisions of the Act do not stop a Port Trust from levying charges until expiry of two months.

(x). The GSAPL and KSAPL have opined that there is no necessity to collect the storage charges in US $ terms for the services rendered within India to the consignees in India. As brought out by CHPT, conversion of Rupee denominated container storage charges to dollar denominated charges carried out by CHPT flowed from the direction of the Government of India vide its letter No. 14012/16/99.1-PG, dated 03 August 1994, wherein the Government has directed the Chairmen of all the Major Port Trusts to notify the then existing storage and container charges in US Dollars and to be realized in Indian Rupees by considering an exchange rate as prevalent on 30 June 1991. It is in this context that the CHPT has converted the Rupee denominated container storage charges as recommended by the Sub-Committee and as approved by its Board into Dollar denominated charges. In fact, from the extract of the Scale of Rates obtained from some of the major container handling Major Port Trusts reflecting the Container Storage charges (as brought out in detail in the earlier part of the Note), it can be seen that even those ports have denominated the container storage charges in US Dollars for the period post 1994. Unless there is volatility in the foreign exchange variation weakening Indian Rupee denomination of charges in US $ terms may not put the users in financial hardship.

(xi). (a). As brought out earlier, the Hon'ble High Court has directed this Authority to decide on the issue of revision of container storage charges for the period from 06 July 1994 to 21 November 2000. In this connection, a table showing a comparison of the container storage charges at CHPT is given below, for ease of reference:

Col 1	Col 2	Col 3			Col 4			Col 5			Col 6		
Sl. No.	**Particulars**	**Prior to 6 July 1994 (in ₹)**			**Notified on 6 July 1994 (in ₹)**			**Recommended by the Sub-Committee (in ₹)**			**Notified on 19 July 1995 by adopting an exchange rate of ₹ 21.05 per US$ on rates prescribed in Col 5 (in US$)**		
		20'	40'	Above 40'	20'	40'	Above 40'	20'	40'	Above 40'	20'	40'	Above 40'
1	**Empty Containers**												
	1st 7 days	20	40	60	20	40	60	20	40	60	0.95	1.91	2.86
	8 – 14 days	40	75	120	500	1000	1500	100	200	300	4.76	9.52	14.28
	Thereafter	125	250	375	1000	2000	3000	500	1000	1500	23.80	47.60	71.40
2	**Loaded Containers (cleared after 7 days)**												
	1st 3 days	Free	Free	Free	Free	Free	Free	Free	Free	Free	Free	Free	Free
	4 – 15 days	15	25	45	500	1000	1500	15	25	45	0.72	1.19	2.14
	16 – 30 days	65	125	195	2000	4000	6000	300	600	900	14.28	28.56	42.84
	Thereafter	125	250	375	7000	14000	21000	1000	2000	3000	95.20*****	190.40*****	285.60*****

***** Though the CHPT had sought approval of the Ministry for the rates as recommended by the Sub-committee denominated in US Dollars, the Government while according approval has considered the rates for the Loaded containers beyond the 30th day as ₹ 2000/- for a 20', ₹ 4000/- for 40' and ₹ 6000/- for Above 40' and the CHPT notified the Dollar denominated tariff accordingly by adopting an exchange rate of ₹ 21.05 per US$.

(b). The proposal of the CHPT is as given below:

Sl. No.	**Particulars**	**(in US$)**		
		20'	***40'***	***Above 40'***
1	**Empty Containers**			
	1st 7 days	0.95	1.91	2.86
	8 – 14 days	4.76	9.52	14.28
	Thereafter	23.80	47.60	71.40

2	**Loaded Containers (cleared after 7 days)**			
	1st 3 days	Free	Free	Free
	4 – 15 days	0.72	1.19	2.14
	16 – 30 days	14.28	28.56	42.84
	Thereafter	95.20	190.40	285.60

(c). The period for which the CHPT has sought approval for the container storage charges is from 06 July 1994 to 21 November 2000. The parties consulted also refer to the period ended on 21 November 2000. Incidentally, the Hon'ble Division Bench vide their lordship's interim order dated 22 November 2000 had directed the parties to pay the revised storage charges from 22 November 2000. It appears that CHPT has sought approval for the container storage charges for the period ended on 21 November 2000 since the Division Bench had already allowed the CHPT to collect the revised storage charges from 22 November 2000. However, the final order dated 8 October 2014 of the Hon'ble Division Bench has directed this Authority to decide the issue for the period from 6 July 1994 to August 2001. Therefore, the issue of the revision of storage charges is required to be considered for the period 6 July 1994 to August 2001.

(xii). The MCPL, GSAPL and KSAPL have opined that rates must be commensurate with the services rendered. Cost of providing services would be a measure of the services rendered. The container storage charges were arrived by the Sub Committee in its report dated 11 August 1994 and no other workings / cost details are made available. In the absence of any cost details made available, it is not found possible to adopt cost based approach.

(xiii). As far as the extent of revision of container storage charges under took in this exercise is concerned, a pivotal aspect of this case is such that, this Authority in compliance of the direction of the Hon'ble Division Bench of Madras High Court is venturing upon to fix the rates for the period 06 July 1994 to August 2001. As per the Orders of the Hon'ble High Court, the contending parties by their mutual agreement expressed their willingness to get the charges fixed for the period under question through this Authority. In order to facilitate fixation of tariff for the period under question the CHPT did not place any cost details before this Authority. Nor were there suggestions from the parties consulted except either to maintain status quo of pre 06 July 1994 rates or to refer to the charges at other Major port Trusts that prevailed during the relevant point of time.

Another interesting aspect of fixation of the charges for the period concerned is that though all the parties, be it CHPT or users are mutually agreeable for the proposition that this Authority may decide the rates for the period in question, there was no mutual understanding among the parties as to what extent the revision ought to be. CSAA was willing for a 10% increase in rates, whereas couple of other users viz., MCPL, GSAPL and KSAPL were of the view that the rates must be commensurate with the services rendered. The CHPT on its part had neither come up at the joint hearing with any concrete percentage of increase it is expecting, but requested this Authority to strike a balance between the interest of the port as well as the trade.

For this purpose, this Authority looked into the manner in which the Sub-committee formed by CHPT fixed the rates, as ascertained that the Sub-Committee referred to the rates prevalent at other major ports. Some users have also gave a lead to consider the rates at other major ports also that were prevalent during the period under question.

(xiv). On perusing the Sub-Committee Report, it is seen that the Sub-Committee has drawn reference to the Scale of Rates of Mumbai Port Trust (MBPT) and Kolkata Port Trust (KOPT) while recommending the container storage charges. The MCPL has also given a lead to refer to the storage charges levied by other Major Ports for the relevant period. In this context, the extract of the Scale of Rates were obtained from some of the major container handling Major Port Trusts reflecting the Container Storage charges prevalent during the period from 1994 to 2000, including MBPT and KOPT. The container storage charges as obtained from the various Major Port Trusts are also found to be of little help. Though the base container storage charges as arrived by the Sub-Committee in its report dated 11 August 1994 in respect of CHPT, is seen to be almost comparable to the base container storage charges levied in other Major Port Trusts, the rate of increase from one chargeable slab to another chargeable slab and the chargeable slab periods are not uniform across the Port Trusts.

(xv). In the major container terminal of JNPT, the rate of increase from first chargeable slab to the second chargeable slab was 100%. Likewise, the rate of increase from the second chargeable slab to third chargeable slab is also seen to be 100%. The similar position prevailed during the relevant point of time at the COPT also. In the case of the CHPT, the rate of increase from first chargeable slab to the second chargeable slab in respect of empty containers was 500% and the increase from second slab to third chargeable slab was also 500%. If the rate of increase in respect of loaded containers is seen, the increase from first chargeable slab to second chargeable slab was around 200%. The increase in third slab with reference to the second chargeable slab was around 670%. Thus, the rate of increase is high at the CHPT as compared to the other Major Port Trusts as brought out above. As rightly pointed out by MCPL, GSAPL and KSAPL, charges were different at the CHPT from what was collected in other Major Port Trusts cited above. Therefore, there is a case for moderation in the container storage charges approved by the Board of Trustees of the CHPT by Resolutions No. 112 and 113 of 17 August 1994. The CHPT has suggested to strike balance between the interest of the port as well as parties, as submitted by the port at the joint hearing.

(xvi). The MCPL has argued that the rates that prevailed prior to 6 July 1994 must be fixed. However, the Order dated 28 August 2000 passed by the Hon'ble Single Judge quashing the impugned notifications is without prejudice to the right of the CHPT to prescribe reasonable increase in the rates, as recorded in the said Order. The Board Resolutions No. 112 and 113 dated 17 August 1994 filed by the CHPT as its proposal for increase of container storage charges for the period in question is before this Authority for consideration. The CSAA which was present at the joint hearing, requested for an amicable solution to the issue and it is agreeable for a 10% increase over the container storage charges prevailed in the year 1994. 10% increase does not meet the figure to strike a balance between the interest of port and the parties.

(xvii). The GSAPL and KSAPL while opposing the increase in container storage charges sought by the CHPT have stated that the vessel owners to whom the steamer agents rendered the service are outside India and the steamer agents are not aware whether the vessel owners still trade. The GSAPL and KSAPL have contended that it is not possible for them to trace the vessel owners to claim the differential amount for the services rendered before 21 years. The steamer agents are well aware that the CHPT had gone on appeal in the year 2000 before the Division Bench challenging the order passed by Hon'ble Single Judge on 28 August 2000. They are also aware that the judgment of the Division Bench was awaited. It may not be unreasonable to state that the steamer agents should have been well prepared to meet the financial obligation due to the CHPT if the appeal filed by the CHPT succeeds. The interim order dated 22 November 2000 passed by the Hon'ble Division Bench requiring the parties to pay the rates as per the revised tariff with effect from 22 November 2000 is sufficient clue for the steamer agents to alert their vessel owners 15 years ago to get ready to meet the financial implication for the period from 6 July 1994 to 21 November 2000. Therefore, the vessel agents cannot now come up with the argument that they cannot trace the vessel owners to claim the differential amount from the vessel owners.

(xviii). The 1992 edition of Scale of Rates of CHPT (before 6 July 1994) prescribed storage charges for loaded containers in two schedules, one for the containers cleared within

7 days and another schedule for containers cleared after 7 days. The Two schedules prescribed identical rates, the difference being only the date of commencement of storage charges. While increasing the storage charges, the schedule pertaining to the containers cleared within 7 days was left intact and only the schedule containing the charges pertaining to the containers cleared after 7 days was revised. The parties always had an option to evacuate the containers within 7 days and avoid coming into the purview of the schedule which prescribed the higher charges for containers evacuated after 7 days. If the parties had chosen not to avail of the less cost option, when such option was available to them they may have to bear the burden of higher cost option or at least share the burden.

The CHPT submitted that the Container storage charges were revised with an intension to drive out the containers which have not been cleared within the reasonable time and if such enhancement is not resorted to, the accumulated container in the transit area will obstruct the functioning of the container terminal and the whole interest of the CHPT will suffer. The very purpose for enhancement of charges was to curtail the defaulters to use the transit area as a warehouse for their containers and not for those who are genuine and cleared the containers promptly within the stipulated time of 7 days. The objective of the CHPT to revise upward the container storage charges is to decongest the container terminal from long pending containers. The long pending containers created insufficient slot for import containers and the CHPT was required to make unproductive moves by the transfer cranes. It is also required to be recognized that it is the responsibility of the users to clear the containers within the free days after completing all the formalities of the Inspection Agencies and the Custom Authorities if the users want to avoid the payment of storage charges. This Authority is inclined to take note of the above reasons brought out by the CHPT in the current proceedings for hike in the Container Storage Charges.

(xix). Keeping in view the request of the CHPT to strike a balance between the interest of the port and the parties, the inclination of the CSAA to accept an increase in the charges to close the long pending case, and also bearing in mind that the CHPT has levied the container storage charges as approved by its Board in the Resolutions No. 112 and 113 dated 17 August 1994 following the interim order of the Hon'ble Division Bench from 22 November 2000, it may not be unreasonable to prescribe the storage charges for the period from 6 July 1994 to 21 November 2000 at 50% of the rates approved by the Board of Trustees of CHPT by its Resolutions No 112 and 113 dated 17 August 1994 for empty containers and loaded containers (cleared after 7 days).

The chargeable slabs at CHPT and the JNPT are identical for loaded containers. If a comparison is made between the 50% of the rates for loaded containers at CHPT with the rates for loaded containers that were prevailing at the relevant point of time at JNPT it can be seen that the rates for first chargeable period of 04 to 15 days at JNPT was at a higher level of 3.25 US Dollar per TEU as compared to mere 0.36 US Dollars per TEU at CHPT. As regards the next chargeable slab from 16 to 30 days, the rate at CHPT at 50% of the rate approved by the Board of Trustees will be 7.140 US Dollars per TEU is comparable to the rate of 6.50 US Dollars that prevailed at JNPT. It is also required to be mentioned that at 50% of the rate for the slab period beyond 30 days which is 47.60 Dollars per TEU is very much on the higher side as compared to the 13 US Dollars per TEU at the JNPT for the period beyond 30 days. The cash out go for the parties, who had evacuated the containers within 30 days is comparable to the cash out go had they evacuated the containers at JNPT during the relevant point of time.

Since the Hon'ble Division Bench has directed this Authority to decide the revision of charges for the period upto August 2001 it is also necessary to decide the revision of charges for the period from 22 November 2000 to August 2001. The Hon'ble Division Bench by their interim order dated 22 November 2000 had directed the parties to pay the charges as per the revised rates. The parties consulted in the proceedings have no pointed objection to the revised rates for the period from 22 November 2000. That being so, this Authority is inclined to order that for the period 22 November 2000 to August 2001, the rates approved by the Board of Trustees of CHPT by its Resolutions No. 112 and 113 will be applicable.

(xx). Clause 3.2.8 of 2005 Tariff Guidelines prescribed a lead time of 30 days from the date of Gazette Notification for the tariff order to take effect. In other words, the lead time of 30 days is a notice period. Therefore, the concerned parties should pay the revised charges within 30 days from the date of notification of the order in the Gazette of India. The rate of interest on the delay in payments will be governed by the relevant provision of the existing Scale of Rates of CHPT.

(xxi). During the proceedings of this case, the CHPT furnished a list of outstanding dues payable by the parties for the period 6 July 1994 to 20 November 2000 at ₹.116.50 crores (rounded off) at the rates proposed by the port. This amount is in the knowledge of the parties as this list was shared with them. At the 50% of rates the amount due would work out to ₹58.25 crores in absolute terms, subject to the correctness of the calculations made by CHPT. If time value of money is taken into account at conservative 8% discount factor from November 2000 to November 2015, the present value (PV) of ₹58.25 works out to only ₹18.36 crores (**Annex - I**). This apart, the CHPT has lost interest on this amount of ₹58.25 crores during the last 15 years.

13. In the result, and for the reasons given above, and based on a collective application of mind, the following container storage charges is approved.

(A) <u>For the period from 6 July 1994 to 21 November 2000:</u>

Sl. No.	**Particulars**	**Container Storage charges in ₹ per day or part thereof**		
		20'	40'	Above 40'
1	**Empty Containers**			
	1st 7 days	0.475	0.955	1.430
	8 – 14 days	2.380	4.760	7.140
	Thereafter	11.900	23.800	35.700
2	**Loaded Containers (cleared after 7 days)**			
	1st 3 days	Free	Free	Free
	4 – 15 days	0.360	0.595	1.070
	16 – 30 days	7.140	14.280	21.420
	Thereafter	47.600	95.200	142.800

Note :- The revised charges should be paid within 30 days from the date of notification of the Order in the Gazette of India. The rate of interest on the delay in payment, if any, shall be as per the relevant provision of the existing scale of rates of CHPT.

(B). For the period from 22 November 2000 to August 2001:

Sl. No.	**Particulars**	**(in US$)**		
		20'	***40'***	***Above 40'***
1	**Empty Containers**			
	1st 7 days	0.95	1.91	2.86
	8 – 14 days	4.76	9.52	14.28
	Thereafter	23.80	47.60	71.40
2	**Loaded Containers (cleared after 7 days)**			

	1st 3 days	Free	Free	Free
	4 – 15 days	0.72	1.19	2.14
	16 – 30 days	14.28	28.56	42.84
	Thereafter	95.20	190.40	285.60

(T.S. Balasubramanian)
Member (Finance)

			Annex -I
Net Present Value of storage charges receivable by CHPT			
(i). Discounting factor	8.0%		
	NPV of Re. 1	at the end of the year	November 2000
	0.92593	1st year	November 2001
	0.85734	2nd year	November 2002
	0.79383	3rd year	November 2003
	0.73503	4th year	November 2004
	0.68058	5th year	November 2005
	0.63017	6th year	November 2006
	0.58349	7th year	November 2007
	0.54027	8th year	November 2008
	0.50025	9th year	November 2009
	0.46319	10th year	November 2010
	0.42888	11th year	November 2011
	0.39711	12th year	November 2012
	0.36770	13th year	November 2013
	0.34046	14th year	November 2014
	0.31524	15th year	**November 2015**
Net Present Value of Rs. 582467657 receivable in the November 2000 if received in November 2015 will be			
(ii). Storage Charges receivable	Rs.	582467657	
(iii). NPV in the Nov 2015 at 8 % discounting factor. (ii *0.31524)	Rs.	183617104	

Annex

CONTAINER STORAGE CHARGES AT SOME OF THE MAJOR PORT TRUSTS

Comparative position of the Storage Charges at CHPT

CHENNAI PORT TRUST.

(I). Container storage charges for the period from 06 July 1994 to 21 November 2000

Col 1	Col 2	Col 3			Col 4			Col 5			Col 6		
Sl. No.	**Particulars**	**Prior to 6 July 1994 (in ₹)**			**Notified on 6 July 1994 (in ₹)**			**Recommended by the Sub-Committee (in ₹)**			**Notified on 19 July 1995 by adopting an exchange rate of ₹ 21.05 per US$ on rates prescribed in Col 5 (in US$)**		
		20'	40'	Above 40'	20'	40'	Above 40'	20'	40'	Above 40'	20'	40'	Above 40'
1	**Empty Containers**												
	1st 7 days	20	40	60	20	40	60	20	40	60	0.95	1.91	2.86
	8 – 14 days	40	75	120	500	1000	1500	100	200	300	4.76	9.52	14.28
	Thereafter	125	250	375	1000	2000	3000	500	1000	1500	23.80	47.60	71.40
2	**Loaded FCL Containers (cleared after 7 days)**												
	1st 3 days	Free	Free	Free	Free	Free	Free	Free	Free	Free	Free	Free	Free
	4 – 15 days	15	25	45	500	1000	1500	15	25	45	0.72	1.19	2.14
	16 – 30 days	65	125	195	2000	4000	6000	300	600	900	14.28	28.56	42.84
	Thereafter	125	250	375	7000	14000	21000	1000	2000	3000	95.20*	190.40*	285.60*

* Though the CHPT had sought approval of the Ministry for the rates as recommended by the Sub-committee denominated in US Dollars, the Government while according approval has considered the rates for the Loaded containers beyond the 30th day as ₹ 2000/- for a 20', ₹ 4000/- for 40' and ₹ 6000/- for above 40' and notified the Dollar denominated tariff accordingly.

Comparative position of the Container Storage Charges as reflected in the Scale of Rates prevailing between 1994 to 2000 at some of the Major Port Trusts

KANDLA PORT TRUST

As in the SOR dated 4.11.1993

For the containers stored in the storage (Export & Import)		
	Empty (US Cents)	Loaded (US Cents)
Per TEU per day or part thereof		
First 07 days	Free	Free
Next 07 days to 15 days	45	90
16 to 30 days	90	150
31 to 90 days	115	190
Above 90 days	145	240

MUMBAI PORT TRUST

As in the SOR effective from 1.09.1994 as well as in the SOR effective from 31.05.2000.

Place of Storage	Rate
*a)Loaded / Empty container landed and stored or brought for export and stored anywhere in the declared Customs areas of the port.	US $ 2.5 per container having length upto 20 feet and US $5 per container having length over 20 feet and upto 40 feet per day or part thereof from the day following the GLD of the vessel till the date prior to the date of shipment (*i.e.* excluding the date of shipment.)

JAWAHARLAL NEHRU PORT TRUST

(I). As in the SOR dated 30.12.1993.

(a).Licence fees for loaded import container, stored in the container yard.

	Upto 20' length (₹)	Over 20' length (₹)
First three days	Free	Free
4 -15 days	60	120
16 -30 days	120	240
Thereafter	240	480

(II). As in the SOR dated 19.03.1997.

(a).Section 3 – Dwell time for Containers, lying in the Port premises---

(i).Dwell time charges per day in respect of loaded import container lying in the port premises shall be as follows-

		Upto 20' length	Over 20'
		(US$)	(US$)
(a)	First three days	Free	Free
(b)	4 -15 days	3.25	6.50
(c)	16 -30 days	6.50	13.00
(d)	Thereafter	13.00	26.00

(ii). Dwell time charges per day for loaded export container, stored in the port premises:

		Upto 20' length	Over 20'
		(US$)	(US$)
(a)	First seven days	Free	Free
(b)	8 -15 dyas	2.86	5.72
(c)	16 -30 days	5.72	11.44
(d)	Thereafter	11.44	22.88

(iii). Dwell time charges per day for empty import or export stored in the port premises:

		Upto 20' length	Over 20'
		(US$)	(US$)
(a)	First 15 days	3.25	6.50
(b)	16 -30 days	6.50	13.00
(c)	Thereafter	13.00	26.00

VISAKHAPATNAM PORT TRUST

As in the SOR of 1993

Licence (storage) fee for storing empty or loaded containers in transit area from the date of loading till the date of removal /shipment is ₹ 2.50 per container of part thereof.

V.O. CHIDAMBARANAR PORT TRUST

(I). As in the SOR for the period 15.01.1992 to 09.09.1997

(a). Storage charges for containers (empty and loaded) stored within the security wall of the port.

	In ₹	In $
	Rate per Container per day or part thereof	
Upto 20 feet in length	6.00	0.29
Above 20 feet in length	9.00	0.43

(II). As in the SOR for the period 10.09.1997 to 28.12.1997

Storage charges for containers (Empty and Loaded) stored inside and outside the security wall of the port published in the Gazette of India Extraordinary dated 10.09.1997 the following shall be submitted:

Sr. no.	Particulars	Rate per container per day or part thereof in US dollars	
		Upto 20 ft in length	Above 20 ft in length
(a).	Inside the security wall:		
	For Containers:		
(i).	For first 3 days	Free	Free
(ii).	Next Seven days	0.75	1.15
(iii).	From 11th to 17th day	3.00	5.80
(iv).	Thereafter	5.80	11.00

Note: "Day" for the purpose of these rules shall be reckoned from 6 a.m. to 6 a.m.

(III). As in the SOR for the period 29.12.1997 to 04.10.2002

Sr. no.	Particulars	Rate per container per day or part thereof in US dollars	
		Upto 20 ft in length	Above 20 ft in length
(a).	Inside the security wall:		
	For the Import and Export Containers:		
(i).	For first 5 days	Free	Free
(ii).	From 6th to 15th day	0.75	1.15
(iii).	From 16th to 22nd day	3.00	5.80
(iv).	Thereafter	5.80	11.00

Note: "Day" for the purpose of these rules shall be reckoned from 6 a.m. to 6 a.m.

COCHIN PORT TRUST

(I).As in the SOR for the period 01.01.1994 to 31.08.1994

Rate per day or Part thereof		
Classification	20'	40'
	(in Rs.)	(in Rs.)
Containers and container chassis	30	60
Transhipment Containers	60	90
Free period	10 Days	10 Days

(ii). As in the SOR for the period 01.09.1994 to 17.01.1996

Rate per day or Part thereof				
Classification	20'		40'	
	(in Rs.)	(in US $)	(in Rs.)	(in US $)
Containers and container chassis	47	2.24	94	4.48
Transhipment Containers	94	4.48	141	6.72
Free period	10 Days	10 Days	10 Days	10 Days

(iii). As in the SOR for the period 18.01.1996 to 29.12.1998.

Rate per day or Part thereof		
Period of occupation	20' (in US $)	40' (in US $)
Empty Containers		
(i). First 7 days	Free	Free
(ii). 8th day to 10th day	2.24	4.48
(iii). 11th day to 15th day	4.48	8.96
(iv). Thereafter	8.96	17.92
Import Loaded Containers		
(i). First 7 days	Free	Free
(ii). 8th day to 15th day	2.24	3.36
(iii). 16th day to 30th day	4.48	6.72
(iv). Thereafter	8.96	13.44
Export Loaded Containers		
(i). First 7 days	Free	Free
(ii). 8th day to 15th day	2.24	3.36
(iii). 16th day to 30th day	4.48	6.72
(iv). Thereafter	8.96	13.44

(IV). As in the SOR w.e.f. 30.12.1998

Rate per day or Part thereof		
Period of occupation	20'	40'
	(in US $)	(in US $)
Empty Containers		
(i). First 10 days	Free	Free
(ii). 11th day to 15th day	3.00	6.00
(iii). 16th day to 30th day	6.00	12.00
(iv). Thereafter	12.00	24.00
Import Loaded Containers		
(i). First 10 days	Free	Free
(ii). 11th day to 20th day	3.00	4.50
(iii). 21st day to 30th day	6.00	9.00
(iv). Thereafter	12.00	18.00
Export Loaded Containers		
(i). First 10 days	Free	Free
(ii). 11th day to 30th day	3.00	4.50
(iii). 31st day to 45th day	6.00	9.00
(iv). Thereafter	12.00	18.00

KOLKATA PORT TRUST

(I).As in the SOR w.e.f. 11.02.1993

Sl. No.	Service	When port equipment is used	When port equipment/labour is used part	When port equipment labour is in not used
1.	Rent on containers	₹ 15.00 per TEU per day from date of receipt both for loaded and empty containers.		

(II). As in the SOR w.e.f. 3.10.1996

Sl. No.	Service	When port equipment is used	When port equipment/ labour is used part	When port equipment labour is in not used
1.	Rent on containers	US $ 1.000 per TEU per day from date of receipt both for loaded and empty containers.		

SUMMARY OF THE COMMENTS RECEIVED FROM THE USERS / USER ORGANISATIONS AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY AND RELEVANT EXTRACT OF ORDER OF SINGLE JUDGE DATED 28 AUGUST 2000.

F. No. TAMP/5/2015- CHPT - **The issue of extent of revision of Container storage charges, if any, at Chennai Port Trust (CHPT) for the period from 6 July 1994 to August 2001 referred by the Hon'ble High Court of Judicature at Madras to the Authority.**

The relevant extract of the Order dated 28 August 2000 passed by Hon'ble Single Judge, relating to the second question "whether the levy is reasonable" considered by the Hon'ble Single Judge, which is taken into account only for the purpose of understanding the perspective of the issue referred by the Hon'ble Division Bench, is reproduced below:

"WHETHER THE RATE IS REASONABLE?

25. *The next question to be considered is whether the enhancement of the levy is reasonable and commensurate with the service rendered. The following table will set out the rates prior to and after the two notifications.*

	RATES PRIOR TO 6.7.94			**RATES NOTIFIED ON 6.7.94**			**RATES NOTIFIED ON 19.7.95**		
Empty Containers	**Upto 20**	**20-40**	**Above 40**	**Upto 20**	**20-40**	**Above 40**	**Upto 20**	**20-40**	**Above 40**
	20	40	60	20	40	60	20	40	60
	40	75	120	500	1000	1500	100	200	300
	125	250	375	1000	2000	3000	500	1000	1500
LOADED CONTAINERS									
I. FCL/LCL (cleared within 7 days for FCL)									
1st 3 days	Free	Free	Free	Free	Free	Free	Free	Free	Free
4-15 days	15	25	45	*NOT REVISED*			*NOT REVISED*		
16-30 days	65	125	195	*NOT REVISED*			*NOT REVISED*		
Thereafter	125	250	375	*NOT REVISED*			*NOT REVISED*		
II. FCL (cleared after 7 days)									
1st 3 days	Free	Free	Free	Free	Free	Free	Free	Free	Free
4-15 days	15	25	45	*500*	*1000*	*1500*	*15*	*25*	*45*
16-30 days	65	125	195	*2000*	*4000*	*6000*	*300*	*600*	*900*
Thereafter	125	250	375	*7000*	*14000*	*21000*	*2000*	*4000*	*6000*

26. *Under Section 48 of the Act, the Board is empowered to fix the rate for service rendered like providing storage under Section 42. Therefore, it should be commensurate with the service rendered and should have a reasonable nexus between the service and the charge. The argument on behalf of the Board is that in the light of the recommendations of the Sub-Committee, the levy has been enhanced as a deterrent or a penalty. As held by the Supreme Court in A.B 1975 S.C. 1935 cited supra the Board is under a statutory obligation to render services in the larger national interest. Congestion in the ports affects the free movement of ships and essential goods. The scale of rates has therefore to be framed in a manner which will act both as an incentive and as a compulsion for the expeditious*

removal of the goods from the transit area. The demurrage rates may be so fixed as to make it unprofitable for the importers to use the port premises as a warehouse. From the enhanced rates, it is seen that the rates prior to 6.7.1994 and the rates after 19.7.1995 are 200 to 300 times higher. By this enhancement, as rightly pointed out by the learned counsel for the petitioners, the levy will exceed the cost of the container plus the cargo, as ultimately, it will amount to confiscatory in nature and will not act as incentive or a service. Such a steep enhancement is unreasonable and arbitrary and has no nexus with the object sought to be achieved. On the contrary, it will be defeating the purpose for which it has been imposed. Either the steamer lines or the agents will abandon the cargo or they may avoid the port. In either of these events, the Board will be failing in their obligation to secure the ownership and control of material resources so as to subserve the common good. Waterways being an essential means of navigation and transport of cargo and persons, have to be maintained and fostered in a manner to subserve the common good. By going through the report of the Sub-Committee, it is seen that they have not addressed themselves with the consequences arising out of such an enhancement and failed to see as to who would be affected by the enhancement. Therefore, there is a total non-application of mind by the authorities concerned. If the levy is intended only on the carrier and on their agents, then there must be a rational basis for fixing the same, and the Board is already compensated in the form of demurrage. Insofar as LCL containers are concerned, it is the Port authorities who are responsible for de-stuffing the containers.

27. It is also seen that by collecting demurrage charges on the goods as well on the container as container storage charges, there is a double levy which is clearly illegal.

28. The Supreme Court, in TATA CELLULAR VS UNION OF INDIA case [1994 (6) S.C.C. 651], held that the judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the court's ability to quash an administrative decision on its merits. These restraints bear the hallmark of judicial control over administrative action. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself. Their lordships approved the view that in exercising the powers of judicial review, courts will take into account any reasons which the body may give for its decisions. If it gives no reasons – in a case when it may reasonably be expected to do so, the courts may infer that it has no good reason for reaching its conclusion, and act accordingly. While laying down the principles of judicial review, their lordships held that the court does not sit as a Court of Appeal, but merely reviews the manner in which the decision was made.

29. In this case, it could be seen that the decision to enhance the rates was taken based on the recommendations of the Sub-committee. The minutes of the Sub-Committee dated 9.8.1994 did not consider the problem of congestion and how it could be avoided. Of course, they say that something drastic has to be done to remove the congestion in the port to expedite speedier disposal of the containers. They have also felt the necessity to seek for early clearance from the Customs and also requested to have an annexe yard. They have not put the blame on the carriers or their agents for the detention of the containers. While dealing with the LCL containers, the Sub-Committee opined that since the steamer agents are statutorily required to account for the good imported into India to the Customs authorities, it should be the responsibility of the steamer agent to de-stuff the cargo and not the Port Trust and since none of <u>the steamer agents representatives was member of the Sub-Committee</u>, a final recommendation could not be arrived at by the Committee. However, with these materials, a steep enhancement has been suggested. Therefore, I am clearly of the opinion that even assuming that the fixation of rate is an administrative policy decision, the manner in which the decision has been taken shows that there is a total non-application of mind and *consideration. The Sub-Committee also did not go into the question of responsibility and the nature of enhancement that it should make under Section 48 of the Act.*

30. *A Full Bench of this court, in TAMIL NADU TAMIL & ENGLISH SCHOOLS ASSOCIATION VS. STATE OF TAMIL NADU & OTHERS [2000 (2) L.W. 319]. Referring to the various judgments of the Supreme Court, held that judicial review is possible even in policy matters if the policy or any action of the Government fails to satisfy the test of reasonableness. The courts are entitled to take into account matters which they ought not to have taken into account, or conversely, they refused to take into account or neglected to take into account the matters which they ought to have taken into account. The courts will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. In DELHI SCIENCE FORUM VS. UNION OF INDIA [1996 (2) S.C.C. 405], the Supreme Court held that any decision taken by a statutory authority or a body constituted under an administrative order to be questioned primarily on the grounds that:*

   (i) The decision has been taken in bad faith;
   (ii) The decision is based on irrational or irrelevant considerations;
   (iii) The decision has been taken without following the prescribed procedure which is imperative in nature.

31. *A learned Judge of this court in VIJAYALAKSHMI MINERALS TRADING CO. VS. UNION OF INDIA (A.I.R. 1986 MADRAS 285) held that a revision of rates is reasonable. The learned Judge held that if the revision of rates is arbitrary or unreasonable or not bearing any correlation to the scope of the cost of services rendered under the statute by the Board, then it can be challenged, though in that case it was held that the rates were reasonable. While justifying the revision, the increase in salaries and allowances, as well as the amenities provided to the staff, workers and other officials and the maintenance of the establishment comprising of buildings, transit and storage sheds, covered and open space, quays, berths, jetties, wharfs, machinery, equipments, security arrangements etc. have all been taken into account in the process of the revision of the rates as could be gleaned from the files made available by the Port Trust. Only after consideration of all the aforesaid aspects, the recommendation for revision has been done and sanctioned by the Central Government. In this case, none of these aspects which are relevant have been taken into account. On the contrary, there is total non-consideration of relevant materials before making an increase. Neither the Committee nor the Board have or the Central Government have addressed themselves on various aspects before enhancing and fixing the responsibility on the members of the petitioner – Association.*

32. *In Visakhapatnam Port Trust V/s. M/s. Ram Bahadur Thakur Pvt. Ltd,. (AIR 1997 S.C. 1057), the Supreme Court held that it was not for the Court to go into the minor details about the value of service rendered by the court and its exact co-relation to the handling charges sought to be recovered. Under the scheme of the Act, the Central Government is the ultimate authority for deciding about the propriety and justness of scale of rates for services to be rendered to the shippers by the Board of the concerned ports governed by the Act. This is a matter to be decided by the Central Government. It was held that the scale of rates for such service which are to be offered by the Board of a major port to the concerned shippers has to be ascertained or fixed in the light of the type of conditions subject to whom such services are offered. It was also held that the Central Government, before ordering modification, can call for objections from the shippers and may even give them hearing. It was held that a conjoint reading of Sections 42 (1) and 48 (1) of the Act shows that the Board has to frame a scale of rates at which and a statement of conditions under which the concerned services are made available at the major ports by the Board concerned. It, therefore, has a direct linkage with the conditions under which such services are rendered.*

33. In the Trustees of the Port of Madras represented by the Chairman Vs. K.P.V. Sheik Mohd. Rowther & Co. Pvt. Ltd. (1963 (2) sup. S.C.R. 1951), the Supreme Court was dealing with the idle harbour charges payable. The Supreme Court held that those charges must be realized from the steamer agents, who may, in their turn, charge the passenger for the same. The charges for that are levied from the person who require that labour and is responsible for its remaining idle. This decision was referred to in 1999 (III) C.T.C. 91, cited supra, and it was observed by their lordships that this decision has no relevance to the point namely whether the Port Trust have a general lien for their dues over the present or future consignment imported by the importers and ultimately held that the High Court was not right in holding that the contract was between the ship owner and the Port Trust. The correct position is that the contract is between the Port Trust and the holder of the bill of lading, which in that case, would be the consignee.

34. In AMINCHAND PYARELAL's case (A.I.R. 1975 S.C. 1935), cited supra the Supreme Court held that demurrage being a charge and not service, the power of the Board is not limited to fixing the rates of demurrage. In THE BOARD OF TRUSTEES OF THE PORT OF BOMBAY VS. INDIAN GOODS SUPPLYING CO. (A.I.R. 1977 S.C. 1622), the Supreme Court held that the scale of rates for demurrage of goods framed by the Board and approved by the Central Government has force of law. These judgements related to the harbour handling charges and demurrage charges. These decisions are distinguishable on facts and as seen earlier, they have been referred to and distinguished.

35. It is pertinent to note that in all the cases where the Board found that the clearance of containers was caused due to the unclaimed cargo, circulars have been issued to enable early clearance. For instances, the Central Government, in their circular dated 17.10.1997, directed that all goods landed upto 1.1.1994 and lying uncleared /unclaimed may be taken up for disposal by the custodians and the process of disposal may be completed by a fixed date by the respective custodians. It was informed that the custodians will not require any N.O.C. from the Customs, as long as they ensure that consignments in respect of which any dispute has been raised by the Customs / importers or where any stay on disposal from any Court or Tribunal is operational, are not disposed of, such interim one-time ….. by the central government for the clearance. In another order of the Tariff Authority for Major Ports dated 10.12.1999, the maximum time limit of two months for abandoned containers has been prescribed. These circulars clearly indicate that the delay in the clearance of containers is not due to the fault of the members of the petitioner – Association and they cannot be held liable for the same.

36. The enhancement of rates from Rs.375/- to Rs.6000/- in case of FCL containers after 30 days, which is the maximum, shows the steep increase that has been made. If the charges are to be piled up at the rate of Rs.6000/- per day, it will be totally disproportionate to the service and irrational and arbitrary. The Board has not approached the problem of congestion in a scientific and rational manner before such a high increase has been made except to state that it is intended to act a deterrent.

37. The case of the Board is that if the storage charges are high, they can be allowed to be moved to the Container Freight Station where there would reduced charges. It has to be seen that the Board has got an obligation when asked by the ship liner to provide the facility of storing. The storage facilities have to be provided by the port at a reasonable cost commensurate with the services rendered. Therefore, they cannot compel the petitioners to move it in area where the storage will be provided on a profit basis. As rightly contended, if space is the problem, it is the duty of the Port Trust to provide their own space in some other suitable place under their control. They cannot avoid their duty by passing the containers to a commercial agent for providing space at a higher cost.

38. *On the question of giving effect to the notifications retrospectively, in Income-Tax Officer, Alleppey Vs.M.C. Ponnoose (AIR 1970 S.C. 385), the Supreme Court held that the courts will not acribe retrospectively to new laws affecting rights unless by express words or by necessary implication it appears that such was the intention of the legislature. The Parliament can delegate its legislative power within the recognized limits. Where any rule or regulation is made by any person, or authority to whom such powers have been delegated by the legislature, it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But, where no such language is to be found, it has been held by the courts that the person or authority exercising subordinate legislative function…….rule regulation or bye-law which can operate with retrospective effect.*

39. *In K.S. Paripoornan Vs. State of Kerala [1994 (5) S.C.C. 593], the Supreme Court held that whether a statute operates only prospectively or has retrospective action is to be determined by the legislative intention indicated in the statute itself. Section 48 of the Act provides for scales of rates for services performed by the Board. The Section further says that the Board shall, from time to time, frame a scale of rates and a statement of the conditions under which any of the services specified shall be performed by itself. Sub-section (2) says that different scales and conditions may be prescribed for different classes of goods and vessels. The expression from time to time makes it clear that the Board is entitled to fix the rates and such rates shall be applied for the services performed. In the light of this provision, the Board is empowered to fix the rates and the same shall be applied even though the goods have arrived earlier. In other words, the rate will be as applicable from the date of such notification. In this case, by the second notification, the rates have been reduced to a considerable extent which accrued to the benefit of the importers and therefore, it cannot be stated that a retrospective operation which has not been intended by the legislature had been given and it is illegal on that score.*

40. *For all the above reasons, I have no hesitation in holding that the impugned notifications are illegal, arbitrary and unreasonable and they are liable to be struck down. However, this shall be without prejudice to the right of the Board to prescribe reasonable increase in the rates after taking the relevant materials into consideration and after giving opportunity to the members of the Association or their representatives in accordance with law. And till then, the rates that existed prior to the impugned notifications will have to be applied. Any payment made or collected in excess shall be refunded after verification. The board is entitled to insist for a confirmation of the consignee for clearing doubts, if any, before refunding the amounts.*

Accordingly, the impugned notification are quashed and the Writ petitions are allowed. NO costs. Consequently, all the connected W.M.P's are closed.

Before parting I record my appreciation for the sole and fair presentation of the case and assistance by the senior counsel Mr. C.A. Sundaram".

2. Since the Division Bench of the Hon'ble High Court of Madras have directed this Authority to complete the task after putting parties to notice, the copy of the CHPT letter dated 22 December 2014 alongwith the enclosures was circulated to the 19 number of parties, as listed in the Order dated 8 October 2014 passed by the Hon'ble High Court of Madras, for their comments. Further, since the Ministry of Shipping (MOS) was also seen to be one of the Respondents in the Writ Appeal filed by the CHPT, a copy of the CHPT communication dated 22 December 2014 alongwith enclosures was also sent to MOS for their comments. Out of the 20 parties, we have received comments from some parties. These comments were forwarded to the CHPT as feedback information. After a reminder, the CHPT vide its email dated 31 March 2015 has responded. A summary of the comments received from the parties and the response of CHPT thereon are tabulated below:

Sr. No.	Comments of users / user organizations	Reply by CHPT
1.	**M/s Madura Coats Pvt Ltd (formerly Coats Viyella India Ltd)**	
(i).	By Notification dated 06.07.1994, the Board of Trustees, increased the Container Storage charges very steeply.	It is a factual position. We have no comments to offer.
(ii).	By a subsequent Notification dated 19.07.1995, the Board of trustees, modified the Container storage charges retrospectively with effect from 06.07.1994. Even after the modification the Container storage charges levied was about 200 to 300 times higher than the rates prevailing prior to 06.07.1994.	
(iii).	A Batch of Writ Petitions came to be filed before the Hon'ble High Court, Madras, challenging the exorbitant enhancement in the Container storage charges.	
(iv).	Madura Coats Pvt. Ltd (formerly Coats Viyella India Limited) filed W.P.14370 of 1995 praying for a Writ of Certiorarified Mandamus to quash the said Notification of the Board of Trustees, Port of Madras dated 19.07.1995 and to direct the Board of Trustees, Port of Madras to forebear from collecting Container storage charges as per the revised rates from 06.07.1994 and to further forebear from collection of Container storage charges at any other rate in excess of the rate prior to 06.07.1994.	
(v).	The Batch of Writ Petitions were heard together by the Hon'ble High Court, Madras and the Hon'ble High Court by its order dated 28.08.2000 was pleased to allow the Writ Petitions and to quash the Notification of the Board of Trustees, Port of Madras dated 06.07.1994 enhancing the Container storage charges. The Hon'ble High Court, Madras held that the impugned notifications are illegal, arbitrary and unreasonable. The Hon'ble High Court, Madras further held that it will be open to the Board of Trustees, Port of Madras to prescribe reasonable increase in the rates after taking the relevant materials into consideration and after giving opportunity to the members of the Association or their representatives in accordance with law. The Hon'ble High Court further held that till then the rates that existed prior to the impugned notifications will have to be applied.	
(vi).	Aggrieved by the Order in the batch of Writ Petitions, the Board of Trustees, Port of Madras preferred Writ Appeals Nos. 1746 and 1747 of 2000. The Board of Trustees, Port of Madras preferred Writ Appeal Nos.	

	1996 of 2001 against the order allowing W.P.14379 of 1995 filed by the Company.	
(vii).	The Batch of Writ Appeals have been disposed of by the Hon'ble First Bench of the Hon'ble High Court, Madras by Order dated 08.10.2014 holding that the extent of revision of the charges, if any, for the period 06.07.1994 to August 2001 by consent the parties be referred to the Tariff Authority for Major Ports for determination.	
	The company submits that the Container storage charges levied prior to 06.07.1994 is reasonable and the same must be fixed for the period in question namely 06.07.1994 to August 2001.	The container storage charges were revised with an intention to drive out the containers which have not been cleared within a reasonable time and if such enhancement is not resorted to, the accumulated containers in the transit area will obstruct the functioning of the container terminal and the whole interest of the Chennai Port will suffer. The very purpose for the enhancement was to curtail the defaulters who used the transit area as a warehouse for their containers and not for those who are genuine and cleared the containers promptly within the stipulated time. Further, as per the Order of the Hon'ble High Court, the container storage charges as per Notification dated 19.7.95 were implemented from 22.11.2000 onwards.
(a).	Port of Madras has a Statutory duty to provide Container storage Space. Sec.42 of the Major Port Trusts Act enumerates the services that the Board may undertake and sec.48 of the Act empowers the Board to fix the rates and the conditions for the services rendered. Therefore, the rates levied must be commensurate with the services rendered.	The Port is under the statutory obligation to render services of various kinds and these services have to be rendered not for the personal benefit of a section of exporters/importers but in the larger interest of the trade. Congestion in the Port affects the free movement of ships and of essential goods. The scale of Rates has, therefore to be framed in a manner which will act both as an incentive and as a compulsion for expeditious removal of goods from the Port's premises. The Container Storage charges were revised in order to de-congest the container terminal from long pending containers. The container terminal is primarily used as a transit point for the containers and not as a storage yard. As the long pending containers created numerous problems namely, insufficient slots for import containers and unproductive moves required to be made by transfer cranes. Further, the storage charges levied on containers is not a fee and it is in the nature of ground rent and it has penal connotation.
(b).	The delay in clearance of imported cargo is on account of the time consumed for inspection and the completion of the formalities by the Inspection Agencies and the Customs Authorities. The Importers /Consignees are not to be blamed for the delay. This plea is specifically raised by the company in its W.P. 14370 of 1995. This specific plea is not denied. In paragraph 3 of its Counter Affidavit, the Port Trust	The contentions of the firm that the delay in clearing the empty containers was on account of the time consumed for inspection and completion of the formalities by the Inspection Agencies and the Customs Authorities is not at all acceptable, as Chennai Port provides free days to clear the containers and when the same is not cleared even after the free days, then the container storage charges are levied. It is the responsibility of the Agents/Consignees to clear

	contends that it is for the Customs Authority to meet the allegation. The Collector of Customs is also a party to the Writ Petition and this specific plea of the company is not denied.	the containers within the free days after completing all the formalities. Further, the Sub Committee of the Board of Trustees of ChPT, was headed by the then Addl. Collector of Customs. Based on the recommendations of this Committee only, the revised container storage charges was approved by the Board, Central Government and notified on 19.7.95.
(c).	The Company/importers/consignees cannot be penalized for the delay committed by the other Departments of the Government.	
(d).	Admittedly, demurrage charges are levied on the goods containerized in the containers. The Container storage charges are levied in addition. Thus, even if the Port Trust has authority to levy Container storage charges, it must be reasonable and cannot be exorbitant as demurrage charges are already collected.	The container storage charges and Demurrage charges are applicable in all Ports. Demurrage is levied on the goods lying uncleared after the free days and likewise, container storage charges are levied on the containers which are lying in the transit area after the free days. The storage charges in respect of FCL/LCL cleared within 7 days are nominal. And even for the FCL cleared after 7 days, the enhancement of charges is only after 30 days. The charges of empty containers were enhanced after 7 days, with a view to clear the empty containers then and there. This shows that the Port's intention is not profit making, but to clear the empty containers and to serve the Port users without any hassle so that the exim trade is not affected. Further, the demurrage charges on the containerized cargo after the applicable free days were levied as per the provisions of the Scale of Rates. The present issue relates only to levy of storage charges on the containers and not demurrage on cargo.
(e).	In fact, it is admitted that the Container Storage charges are not demurrage. If so, it must be reasonable.	
(f).	The exorbitant rate will exceed the cost of container of the cargo and will ultimately be confiscatory in nature and will not act as an incentive.	As already stated, the objective of increasing the container storage charges was to pave way for early clearing of the containers. As stated in counter affidavit to Writ Petition No.11747 of 1994, an alternative option of moving out the containers to the customs notified areas outside the port is available.
(g).	It is the duty of the Port Trust to provide storage space for the cargo. If the Container storage charges are levied as an incentive as projected by the Port Trust, they must be reasonable and not arbitrary.	Refer reply given to item no. (a) above.
(h).	In fact, the Hon'ble Single Judge after going through the report of the Sub Committee has held that the Board of Trustees have not addressed themselves with the consequence arising out of such enhancement. The Hon'ble Judge has further held that the Minutes of the Meeting of the Sub Committee dated 09.08.1994 did not consider the problem of congestion and how it could be avoided. The Hon'ble Judge has held that the Port Trust has not approached the problem of congestion in a scientific and rational manner and that there is total non-application of mind by the Authorities concerned.	The Order of the Single Judge had been challenged by the ChPT by filing Writ Appeals. In the Writ Appeals, the Division Bench passed Interim Order allowing the port to collect the revised container storage charges from 22.11.2000 onwards without any modification.

(i).	The very attempt of the Port Trust to levy the charges in USD and to collect the same in Indian Rupee would indicate that the levy is arbitrary and has been undertaken with a view to penalize the consignees /importers.	Levy of container storage charges in US Dollar and recovery in Indian Rupee is as per the Policy directions of Government of India. The Government of India vide Letter No.14012/16/9.1-PG dated 3 August 1994 directed the Chairmen of all Major Ports that the existing storage and container be notified in U.S. Dollars and realized in equivalent Indian Rupees and that such conversion be made on the basis of exchange rates prevalent on 30.6.1991. Accordingly, the container storage charges arrived by the Sub Committee of the Board, were converted into US Dollar terms and approved by the Board vide B.R. No.113 dated 17 August 1994. Even today, in all the container terminals operated in the Major Ports in India, the container storage charges are prescribed in US$ term and collected in INR.
(j).	The Importers /Consignees are liable to pay the demurrage charges. The Container does not belong to them and is used for facility of operation. It will be illegal to collect the Container storage charges from the Consignees like the Petitioner Company and the same has been levied on the proper person.	The Port plays an interposing role between the Steamer Agent and the Consignee as per the Rules & Regulations in force. The Port comes to know about the consignee only through the Steamer Agent and does not have any direct relationship with the consignee, until the consignee surrenders the delivery order issued by the Steamer Agent. Therefore, it is obvious justice that the onus of the Steamer Agent does not cease until the cargo in entirety is cleared out of the Port premises. The charges paid by the Steamer Agents to the Trust are in turn collected from the Consignees and as such the contention that the charges should be collected from the Consignees is baseless. The container storage charges were revised after prolonged debate and after involving the representatives from the Trade, which has also been approved by the Central Government. Further, as per the orders of the Division Bench of the Hon'ble High Court, the revised container storage charges were implemented from 22.11.2000.
(k).	The levy of Container storage charges must be reasonable. An instrumentality of the State cannot resort to profiteering by levying penal container charges. The rates that existed prior to 06.07.1994 is reasonable. It is requested that the same rates be applied for the period in question viz 06.07.1994 to August 2001.	
2. **3.**	**M/s Greenways Shipping Agencies Pvt Ltd (GSAPL)** **and** **M/s "K" Steamship Agencies Pvt Ltd (KSAPL)**	
	The comments received from GSAPL and KSAPL are similar.	
(i).	[The GSAPL and KSAPL have described the chronology of events leading to the Order dated 8 October 2014, which has already been brought out earlier. Hence, not repeated here].	
	Based on the above Order, our contention is as follows:	

(ii).	[The GSAPL and KSAPL have described the general functions of the steamer agents].	
(iii).	In so far as container trade is concerned the containers are essentially of 2 kinds:- a. Where the container contains the cargo of different consignees and different types of cargo, which is known as Less Container Load (LCL). b. Where the entire container, is far one particular consignee with mostly similar goods, which is known as Full Container Load (FCL).	
(iv).	In so far as LCL Cargo is concerned, the Port trust permits immediate de-stuffing or emptying of the cargo from the containers and it is later on retained by the Port at its premises, while the containers are taken away by the steamer agents for continued utilization for loading fresh cargo. However, as regards FCL Containers are concerned, the importers are not permitted to de-stuff the containers in view of the requirement of Customs and other formalities. If the cargo is removed from the container, then the cargo would still continue to be in the Port, carrying demurrage until finally cleared by the consignee. If the empty containers are not removed, storage charges are imposed on shipping lines/agents. Similarly, if loaded containers are not removed within three days, container storage charges are imposed on them. The rates of these charges came to be steeply enhanced that too retrospectively by the notifications dated 06.07.1994 and 19.07.1995 by the Madras Port, which gave rise to filing of writ petitions as stated hereinabove.	The notification dated 6.7.94 was not implemented with retrospective effect. The notification dated 19.7.95 was issued in modification of the earlier notification dated 6.7.94. Hence, the same was sought to be implemented from 6.7.94. The reason for increase is already explained in our earlier remarks.
(v).	If the steamer agents are ultimately called upon to pay the rates as stated in the impugned notifications, the same would cause extreme hardship as the container storage charges would be far in excess than the agency commission, freight amount and the value of the cargo itself. In the event of the consignee not taking delivery of the cargo and the steamer agents are called upon to make payments for the storage of the containers, the collection of such amount from the consignees would become impossible since it may exceed the value of the cargo. Besides, the sale of the cargo involves elaborate procedural formalities and is time consuming.	The Container Storage charges were revised in order to de-congest the container terminal from long pending containers. The container terminal is to be primarily used as a transit point for the containers and not as a storage yard. The long pending containers created numerous problems namely, insufficient slots for import containers and unproductive moves required to be made by transfer cranes. The container storage charges were revised with an intention to drive out the containers which have not been cleared within a reasonable time and if such enhancement is not resorted to, the accumulated containers in the transit area will obstruct the functioning of the container terminal and the whole interest of the Chennai Port will suffer. The very purpose for the enhancement was to curtail the
(vi).	The Madras Port Trust by virtue of the aforementioned notifications is seeking to	

	profiteer out of what is essentially a necessary service to be rendered in the larger public and national interest as contemplated under Section 42 of the Act.	defaulters who used the transit area as a warehouse for their containers and not for those who are genuine and cleared the containers promptly within the stipulated time. The container storage charges are levied on the containers which are lying in the transit area after the free days. The storage charges in respect of FCL/LCL cleared within 7 days are nominal. And even for the FCL cleared after 7 days, the enhancement of charges is only after 30 days. The charges of empty containers were enhanced after 7 days, with a view to clear the empty containers then and there. This shows that the Port's intention is not profit making, but to clear the empty containers and to serve the Port users without any hassle so that the exim trade is not affected.
(vii).	The rates proposed are not commensurate with any services rendered and it is therefore in the nature of a tax for which there is no constitutional mandate, power or jurisdiction.	As already stated, the increase was to prevent using the port premises as storage yard. The container storage charge is not a fee; it is in the nature of ground rent and it has penal connotation.
(viii)	The very nature of the levy is arbitrary as the Port Trust has not stated the reasons in detail as to why there is an increase in charges and the reason for collecting such charges in US$. For services rendered within India to consignees in India, there is no necessity to collect the fees in US$.	The proposal of increasing the container storage charges has been deliberated at various levels including the Board of Trustees and the increase was approved by the Government of India. Further, even after notification dated 6.7.94, the Board constituted a Committee comprising of representatives from Trade to revisit the proposal. Based on the recommendations of the Committee, the increase proposed in the Notification dated 6.7.94 was reduced substantially and a revised notification was issued on 19.7.95. The levy of container storage charges in US$ is as per the policy directions of Government of India. Even today, in all the container terminals operated in the Major Ports in India, the container storage charges are prescribed in US$ term and collected in INR.
(ix).	If the aim of the Port trust is to penalize the consignees for delayed collection of cargo, then the Port trust has to initiate separate action against the consignees and they cannot seek to penalize the steamer agents for defaults on the part of the consignee in taking delivery of imported cargo.	The Port plays an interposing role between the Steamer Agent and the Consignee as per the Rules & Regulations in force. The Port comes to know about the consignee only through the Steamer Agent and does not have any direct relationship with the consignee, until the consignee surrenders the delivery order issued by the Steamer Agent. Therefore, it is obvious justice that the onus of the Steamer Agent does not cease until the cargo in entirety is cleared out of the Port premises. The charges paid by the Steamer Agents to the Trust are in turn collected from the Consignees and as such the contention that the charges should be collected from the Consignees is baseless. Further, as already stated in our counter affidavit to Writ Petition No.11747 of 1994, the increase in rates had been made only to

		container storage charges and not to demurrage on cargo. The contract for carriage of goods is entered into between the consignees and the container operators and not between the Port and container operators. The steamer agents / container operators are therefore, required to liaise with their consignees and principals in having their containers moved out within the free time.
(x).	The levy and imposition of exorbitant charges is ex facie against the public policy, public interest and against the economic well-being of the country, and the rates sought to be levied by the notifications dated 19.07.1995 and 06.67.1994 are totally disproportionate and different from what is collected in major Ports in India.	The notification was issued after the approval of the Central Government. The rates fixed were statutory in nature. Hence, the contention of the firm that the revision is against public policy, public interest, etc. are not correct. The increased container storage charges were fixed only for the defaulters who are not clearing the containers within the reasonable period, based on the extent of delay. The rates prescribed in Notification dated 19.7.95 have been implemented with effect from 22.11.2000 as per the Court directions.
(xi).	Once the FCL Containers are unloaded and the consignees do not take immediate delivery, they are neither permitted to de-stuff the same nor they are permitted to keep the containers anywhere other than the Port Premises. Therefore, the enhanced storage charges, if imposed, as a penalty deterrent, the Port Trust can levy the same only against the consignee and imposition of such charges on the consignee is inequitable.	Remarks furnished in respect of Sl. No.(ix) above may please be seen.
(xii).	The port trust also cannot impose any charges on the steamer agents until expiry of a period of two months as per Section 61 of the Major Port Trusts Act. It is pertinent to note that neither the steamer agents nor the liners have any control over the clearance of goods after the same are unloaded. The levy did not take note of the circumstances leading to the delay in clearing the goods. The imposition of storage charges in addition to the demurrage charges for the same services are therefore clearly arbitrary.	Remarks furnished in respect of Sl. No.(ix) above may please be seen.
(xiii)	Chapter V of the Manual of Instructions deals with the procedure for passing of import applications. It provides that the import application filed by the importer or any one on his behalf should be followed by the Bill of lading or delivery order duly endorsed by the steamer agents. Then, the import application is compared with the Bill of Entry and therefore, the cargo is delivered after ensuring:- a. That they are delivered to the rightful owner. b. That the Customs duty had been paid and c. That all port charges had been recovered.	We have no comments to offer.

	In case; if there is delay in taking delivery of the goods by the consignee for whatsoever reason, the steamer agent can warehouse these goods. In such an event, the warehouse has an independent claim against the consignee or endorsee of Bill of Lading for the demurrage charges. Thus, the procedure set out makes the following process:- a. The agent of the liner informing the arrival of the ship and nature of the cargo it carries to the Port authorities as well as to the Customs. b. The Bill of Lading holder files the Bill of Entry and the import application. c. After the Bill of Entry is passed by the Customs, the goods are cleared. The same procedure is followed in case of unloading of the containers also.	
(xiv)	Section 2 (o) of the Major Port Trusts Act defines owner in relation to goods as including any consignor, consignee, shipper or agent. Section 42 of the Act empowers the Board to undertake the service of landing, receiving, removing, transporting and storing of the goods brought within the Board's premises. Sub Section (3) of Section 42 enables the Board to authorize any person to perform any conditions as may be agreed upon. Chapter VI deals with the imposition and recovery of rates for services performed by the Board.	As per the provisions of MPT Act, 1963 when the Port charges are not paid, Port could very well take lien on the cargo left/stacked within the premises of the Port. Though the term 'Owner of the cargo' has not been defined in the SoR, the same is defined under Sec.2 (O) of the MPT Act, 1963. The said definition is very wide and clear which includes not only the consignor/consignee but also the Shipper or Agent for the sale, custody, loading or unloading of such goods. Therefore, wide option could be availed by the Port to recover its dues not only from the Consignor/consignee but also from the Shipper/Agent if the port dues are not paid.
(xv).	On the basis of the above, the Board undertakes the service of providing storage for the containers by prescribing rates for those services. Under the scheme of the Major Port Trust Act and the Customs Act, the carrier is required to deliver the container to the Port Authority. Under sub section (2) of Section 42, the Board takes charge of the goods for the purpose of performing the service and it shall give a receipt in such form as the Board may specify. Section, 45 of the Customs Act imposes restrictions on the removal of imported goods until they are approved by the Commissioner of Customs. Section 46 deals with the entry of goods on importation. The importer or his agent shall present to the proper officer, a bill of entry and makes a declaration in a proper form. Section 47 deals with the clearance of goods. Therefore, the moment the ship arrives, the ship owner is not permitted to deliver the cargo directly to the consignee. The Containers are unloaded and are kept for the purpose of clearance. During this period,	Remarks furnished in respect of Sl. No.(ix) and (xiv) above may please be seen.

	pending clearance, the liner or its agents are not entitled to empty or de-stuff the container however, they are given three days to clear the containers, and charges are levied thereafter, depending upon the period taken for their clearance. After the 3rd day, charges start running on day to day basis.	
(xvi).	The obligation of the carrier and the steamer agents comes to an end once the container is entrusted to the Port Authorities. If there is any delay, it should be the responsibility of the consignee. This is because the Port trust by virtue of the provisions of the Major Port Trusts Act, becomes a bailee under statute, in other words, a statutory bailee. The demurrage charges are collected from the consignees and also for the containers which are retained for their benefit. The levy, if any, must be collected only from them.	Remarks furnished in respect of Sl. No.(ix) above may please be seen. Further, as already stated in our counter affidavit to Writ Petition No.11747 of 1994, the increase in rates had been made only to container storage charges and not to demurrage on cargo. The contract for carriage of goods is entered into between the consignees and the container operators and not between the Port and ship container operators. The steamer agents / container operators are therefore, required to liaise with their consignees and principals in having their containers moved out within the free time.
(xvii)	The Port Trust cannot contend that the responsibility rests with the steamer agents to ensure that the consignees clear the goods, and in case of default by the consignee, the steamer agents will be levied with the charges. It is submitted that such a stand by the Port Trust is against the interest of the trade and it will be impossible to do business as Steamer Agents.	Remarks given in respect of Sl. No.(ix) may please be seen.
(xviii	In view of the foregoing, it is submitted that the steamer agents cannot be extorted of amounts for which they were not statutorily liable. It is pertinent to state that the services rendered by the steamer agents were for the vessel owners most of whom are outside India and the steamer agents are not currently aware, whether they are still trading. Hence, it would be practically impossible to trace the principals/ vessel owners who had engaged our services before a period of 21 years and claim the differential charges as stated in the notifications dated 06.07.1994 and 19.07.1995. It is most probable that most of the principals' / vessel owners could have changed their course of business or be untraceable by us.	The Steamer Agents are well aware of the increased container storage notified by the Port by Notifications dated 6.7.94 and 19.7.95. The revised container storage charges could not be collected as notified only because of filing of Writ Petition by the Steamer Agents in the Court. Hence, the Steamer Agents are well aware that the matter is pending before the Hon'ble High Court for final decision. Hence, the Steamer Agents now cannot take shelter by stating that the services were rendered before 21 years and their principals could not be traced. The Steamer Agents will be responsible for making the payment to the ChPT as per the orders to be passed by TAMP.
(xix)	Further, it also pertinent to state that if the said amount is being claimed by the Port Trust for the revision of charges for the period from 06.07.1994 to 22.11.,2000,this authority would have to give us a detailed breakdown of the same for each and every corresponding transaction with the relevant prevailing exchange rate as on date of the said amount being due.	The bill details are voluminous and run into hundreds of pages for each party. They are available in ChPT in electronic form.
(xx).	Moreover, the levy of revision of charges for the period 06.07.1994 to 22.11.2000, is	Remarks furnished in respect of Sl. No.(xviii) above may please be seen.

	akin to levy of taxes with a retrospective effect. The same is in its entirety illegal, unconstitutional and cannot be substantiated by any means as such.	
4. **5.**	**M/s Chennai & Ennore Ports Steamers Agents Association (CEPSAA) (formerly known as Madras Steamers Agents Association).** **Shipping Corporation of India (SCI).** Letter dated 7 February 2015 (	
(i).	From paragraph 40 of the judgment dated 28.08.2000 of Hon'ble Mr. Justice P. Shanmugam of the Madras High Court (Annexure 3 to the Letter dated 22.12.2014 of the Chennai Port Trust) it can be seen that the notification dated 6.07.1994 and 19.07.1995 were set aside and struck down as illegal, arbitrary and unreasonable. The learned Single Judge further directed the CHPT to prescribe reasonable increase in the rates after taking the relevant materials into consideration and after giving an opportunity to the members of the Association and the other parties in accordance with law.	The Sub Committee of the Board of the Trustees, which includes representatives from the Trade, vide their report dated 11 August 1994 have analysed the issues and arrived at the revised container storage charges. This was subsequently approved by the Board and the Government and notified on 19.7.95. Now, at this juncture, after a lapse of 20 years, it may not be possible to prepare a fresh proposal for the container storage charges for the period from 6.7.94 to 21.11.2000. Further, the rates as per Notification dated 19.7.95 had been implemented from 22.11.2000 without any modification, as per the Court's directions. Now, the High Court vide Order dated 8 October 2014 has referred the matter to TAMP to decide the extent of revision of container storage charges. The Hon'ble High Court has not directed the ChPT to file a fresh proposal to TAMP and also it has not upheld the Order of the Single Judge dated 28.8.2000. Hence, it is stated that as per the Court Order, it is for the TAMP to examine the entire case independently and issue Orders. The ChPT vide its letters dated 22.12.2014 and 03.02.2015 has already furnished all the requisite details / available records. The ChPT has requested TAMP to approve the charges as per the Notification dated 6.7.94 and 19.7.95, which is a plea made before TAMP, based on the Court's directions to refer the matter to TAMP. In other words, the proposal of the Port is to approve the charges as approved by the Board vide B.R. No.112 and 113 dated 17 August 1994.
(ii).	The CHPT had challenged the aforesaid judgment in Writ Appeal Nos. 1746 and 1747 of 2000. A Division Bench of the Hon'ble Madras High Court, while ordering Notice of Motion on 22.11.2000 in the said Appeals, had only stayed the directions given by the Learned Single Judge to refund the amounts collected by the Port and the collection of Arrears of rent as per the revised tariff contained in the aforesaid notification.	
(iii).	In the final order delivered on 8.10.2014, the Hon'ble Court had not set aside the findings of the Learned Single Judge or his conclusions, which would therefore be binding on all the parties including the CHPT. Consequently the Port cannot now seek to refer to or rely on the Tariff unilaterally fixed by them, in July 94 and July 95. Further, although the Learned Single Judge had permitted the Port to revise the tariff and in the meantime, the Port's power to frame the Scale of Rates has been taken away and vested with TAMP, the Authority has been directed to revise the tariff by the Hon'ble Division Bench.	
(iv).	It is brought to the notice of the Hon'ble Authority, that for the period between 06.07.1994 and 21.11.2000, the CHPT has to submit a fresh proposal to TAMP for revision of the tariff for the said period, keeping in mind the various observation made in judgment dated 28.08.2000 and in particular, paragraph 40 thereof.	

(v).	The CHPT may be directed to submit a revised proposal to the Authority, making a copy thereof to all the parties concerned including CEPSAA, so as to enable CEPSAA & SCI submit its response to such proposal.	
	Letter dated 27 February 2015	
(i).	It is reiterated that in view of the fact that the notifications issued by the then Madras Port Trust having been set aside as illegal, arbitrary and unreasonable, vide Paragraph 40 at page 42 of the judgment, by the Learned Single Judge of the Hon'ble Madras High Court on 28.08.2000, the Port Trust cannot claim revision of the tariff on the basis of the said notifications. It was precisely for such reason, we had by our response dated 07.02.2015, pointed out that the Chennai Port Trust has to submit a fresh proposal to TAMP, which does not appear to have been done even by their further representation dated 08.02.2015, wherein they are only referring to the two notifications which have been struck down by the Hon'ble Madras High Court.	
(ii).	We would therefore request the Hon'ble Authority to direct the Chennai Port Trust to submit a fresh proposal.	

3. A comparative position of the container storage charges as reflected in the Scale of Rates prevailing between 1994 to 2000 of the Major Port Trusts viz., Kandla Port Trust (KPT), Mumbai Port Trust (MBPT), Jawaharlal Nehru Port Trust (JNPT), Visakhapatnam Port Trust (VPT), Cochin Port Trust (COPT), V.O. Chidambaranar Port Trust (VOCPT) and Kolkata Port Trust (KOPT) is attached as **Annex**.

4.1. A joint hearing on the case in reference was held on 06 April 2015 at the CHPT premises in Chennai. At the joint hearing, CHPT and users/ user organisations have made the following submissions:

<u>Chennai Port Trust (CHPT)</u>

(i). The issue relating to Storage charges on containers for the period from July 1994 to November 2000 was pending since 2000 in the Madras High Court. Now, High Court has given a direction to TAMP which we have referred to TAMP.

(ii). The increase in storage charges was effected in July 1994, mainly to decongest the port from containers. When the Steamer Agents approached the High Court and the Court granted interim stay, with regard to the increase effected, the CHPT Board constituted a Sub-Committee comprising of Trustees to study the impact of increase in charges.

(iii). Based on the Report of the Sub-Committee, the quantum of increase effected earlier was reduced in July 1995. Simultaneously, based on the Government's direction, the container storage charges was prescribed in US dollars on the basis of exchange rate prevailing as on 30.6.91 and realized in Indian Rupees. The increase was only for storage of empty and FCL containers.

(iv). Again, when the Steamer Agents approached the High Court, the Single Judge quashed the CHPT notifications of July 1994 and July 1995.

(v). When the CHPT went into appeal, the Division Bench stayed the Order of the Single Judge directing refund of the amount and collecting arrears as per new tariff rates and directed CHPT to collect the revised Storage charges with effect from 22.11.2000.

(vi). The issue relating to Storage charges on containers for the period from 6 July 1994 to 21 November 2000 was pending before the Hon'ble Court. Now, this has been referred to TAMP by the Hon'ble Court. The period for revision is from 06 July 1994 to 21 November 2000.

(vii). The total amount due for the said period excluding the interest component works out to ₹ 129 crores. After adjustment of Deposits, the amount recoverable works out to ₹ 116 crores.

(viii). The Division Bench has allowed recovery of increased storage charges with effect from 22.11.2000. This shows that the Division Bench has set aside the Order of single Judge.

(ix). It is to be noted that the Sub-committee formed by the CHPT Board, which decided the rates comprised of trade representatives also. This sub-Committee had brought down the earlier increased rates.

(x). Since the area is a constraint in CHPT, the storage charges were increased so as to discourage users who use the port area for storage of containers. The Port in its proceedings before the Hon'ble Court has always maintained that the port area is a transit area and that it cannot be used to store containers on a long term basis.

(xi). Severe congestion prevailing at the relevant point of time necessitated the increase in the storage charges. Recoverability of the sum due is also an issue. We hope that, like in the past, TAMP will take a well-informed view in the matter and try to strike a balance between the interest of the port as well as of the trade.

Partner Advocate Shri. T Poornam from M/s. Nataraj, Rao, Raghu and Sundaram on behalf of CHENSAA and SCI:

(i). The judgment of Single Judge of Hon'ble Madras High Court dated 28.08.2000 has set aside and struck down the CHPT notifications dated 6.07.1994 and 19.07.1995.

(ii). In the Appeal filed by the CHPT, the Division Bench of the Hon'ble Madras High Court, had not set aside the findings of the Learned Single Judge or his conclusions but had only stayed the directions given by the Learned Single Judge to refund the amounts collected by the Port and the collection of Arrears of rent as per the revised tariff contained in the aforesaid notification. Thus, according to us, the CHPT notifications of July 1994 and July 1995 have been wiped off.

(iii). The matter has to be seen afresh. Since the onus is on TAMP to fix the rates, we strongly believe that a fresh proposal should be given by the CHPT to TAMP and fresh consultation proceedings should be initiated. TAMP cannot be influenced by the past.

[FA & CAO, CHPT: The Hon'ble Division Bench has not made any direction to CHPT to file a fresh proposal.]

(iv). Port' proposal was unreasonable. TAMP cannot consider the two notifications as CHPT proposal. TAMP can independently review and fix some reasonable container storage charges for the period in question.

The Chennai & Ennore Ports Steamer Agents' Association (CHENSAA)

(i). The quantum of increase sought by the CHPT in the storage charges then were very much unreasonable.

(ii). The Industry is in doldrum and people are finding it difficult to survive. In such a situation, we are not in a position to bear any increase in charges.

(iii). Given that the matter has been pending for quite a long period of time, we want an amicable and viable closure to this case.

(iv). If increase in charges is inevitable, we could take on a 10% increase over the 1994 tariff.

(v). The Division Bench Order is only an interim Order. When the Appeals of the port have been dismissed by the Hon'ble High Court, the earlier interim Order stand vacated.

(vi). Since the matter is pending from quite some time, we request for an amicable solution to this issue.

International Clearing & Shipping Agents (ICSA)

(i). Can the port justify the exorbitant increase in the container storage charges? Are any workings available with the port?

(ii). If the port has space constraints, why should the importers be penalized?

(iii). Moreover, recovery will pose a problem, as we now do not deal with any of the previous principals. The principals relevant for the huge claim of CHPT are not in existence now.

(iv). Since TAMP will be deciding on the matter, we are bringing these issues to the notice of TAMP.

(v). If we see the trend of the increase in the Scale of Rates granted by TAMP during the past few general revisions, it can be seen that the rates have been increased by TAMP in the range of 15% to 20%, except the last increase of 42%. In such a scenario, the increase in the Container storage charges effected by CHPT is very much unreasonable. Where was the justification for enormous increase in 1994?

(vi). Further, the CHPT does not have any workings in support of the increase sought. There should be a logic to increase the charges.

(vii). The Division Bench allowed recovery of increased storage charges with effect from 22.11.2000. Acceptance of increased rates in 2000 is attributable to inflation from 1994. But that does not mean that the said rate can be made applicable from 1994 onwards. The container storage charges in 1994 should be at a level lower than the rates in 2000.

(viii). The port area is not a transit area. It is only a terminating point, in the entire logistics chain.

4.2. As decided at the joint hearing, the parties were requested vide our letter dated 8 April 2015 to furnish their additional submission, if any, on the subject proposal. In response, Madura Coats Pvt. Ltd (MCPL) vide its letter dated 18 April 2015 and CEPSAA & SCI vide its letter dated 24 April 2015 have made their submissions. These submissions were forwarded to CHPT as feedback information. The CHPT, vide its letter dated 5 May 2015 and 6 May 2015 has furnished its reply on written submissions of the parties. It is relevant to mention here that the CHPT while responding to the comments of MCPL vide its letter dated 5 May 2015 has endorsed a copy of its comments to

MCPL also. Accordingly, the MCPL in turn, vide its letter dated 9 May 2015 has responded to the comments of CHPT. The summary of the written submissions made by parties and reply furnished by CHPT thereon and subsequent submissions by MCPL on comments of CHPT are tabulated below:

Sr. no.	Summary of submissions made by the parties	Reply furnished by CHPT	Response of MCPL on the comments of CHPT
1.	**M/s Madura Coats Pvt Ltd (formerly Coats Viyella India Ltd)**		
	(The MCPL has repeated the chronology of events culminating into the present proceedings. Hence, they are not reproduced here).		
(i).	The exercise will be complete only if the Chennai Port Trust makes available the following details/ data/ figures:- (a). The container storage charges leviable under the Impugned Orders for the containers handled during the period in question. (b). The actual cost incurred by the Port for rendering the service during the relevant period.	M/s. MCPL had filed Writ Petition No.14370 of 1995 in the High Court of Madras, challenging the enhancement of container storage charges by CHPT, as a Consignee. As far as container storage charges are concerned, the Steamer Agents / Main Line Operators are liable to pay the same to the Trust. The firm-wise details of container storage charges leviable as per the Notification dated 19.7.95 has already been given to TAMP vide letter dated 24.12.2014. The final claim will be made as per the Order passed by TAMP, with the details of containers handled by the respective agent/MLO. It is reiterated that the very purpose of the enhancement was to de-congest the container terminal and to penalize the users who did not clear the containers within the free period / reasonable time. Further, the container storage charge is not a fee for the service rendered; it is in the nature of ground rent for the space occupied by the container and it has penal connotation. As such the actual cost incurred by the Port is not relevant. A copy of the Board approval and Sub-committee report for arriving at the rates, has already been forwarded to TAMP.	Chennai Port Trust has refrained from disclosing vital information sought for in the letter dated 18.04.2015. Chennai Port Trust has declined to divulge the details on an assumption that Container Storage charges is penal and that the actual cost incurred by the Port is not relevant. The aforesaid assumption of the Chennai Port Trust is not correct. In this connection it is relevant to note that the Hon'ble First Bench of the High Court, Madras has directed that the extent of revision of charges for the relevant period be determined by the Statutory Committee under Chapter V-A of the Major Port Trust Act and the Authority has been required to put the parties on notice. Further, the Hon'ble Single Judge, by order dated 28.08.2000, has in paragraph 26 of the order, upheld the contention that the enhanced levy will exceed the cost of container plus the cargo as ultimately, it will amount to confiscatory in
(ix).	If the Chennai Port Trust furnishes the aforesaid particulars, the mind boggling disparity between the levy and the cost of providing the service will be evident. At this juncture it is relevant to bear in mind that the Port Trust is enjoined by Statute to provide	Reply furnished in respect of paragraph (8) above may please be seen. With reference to the statutory duty of the Port to provide the service, reply / remarks has already been furnished in our letter dated 5.4.2015.	

<table>
<tr><td></td><td>the service and it enjoys a monopoly in its operations.</td><td></td><td rowspan="7">nature and will not act as incentive or a service. It is also held that such a steep enhancement is unreasonable and arbitrary and has no nexus with the object sought to be achieved and on the contrary, it will defeat the purpose for which, it has been imposed.

Further, the Chennai Port Trust has also relied on the Board's approval and the Sub Committee report for justifying the enhanced rates. It is relevant to note that the Hon'ble Single Judge had already considered these and held that relevant factors have not been taken into account and there is a total non-consideration of relevant material before making the enhancement. Thus the very assumption of the Chennai Port Trust to justify its refusal to divulge material information is incorrect.

The Hon'ble First Bench has directed the Statutory Committee to determine the issue of extent of revision of charges. This can be meaningfully done only after the CHPT provides particulars regarding the actual expenses incurred by the Port Trust for the services for the period in question. This will highlight the mind boggling disparity between the levy and the cost of providing the services. The extent of levy of Container Storage Charges by other Major Port Trusts for the relevant period will also throw light. These details must be made available to the</td></tr>
<tr><td>(x).</td><td>It is requested that the aforesaid particulars are made available by the Chennai Port Trust to enable us to raise our objections immediately, in the light of the actual and relevant data, We can furnish our objections immediately after the data is furnished by the Chennai Port Trust without any delay 011 our side.</td><td>The ChPT has already furnished the requisite details / information to TAMP and also furnished its reply / remarks to the users' comments. As already stated in letter dated 30.3.2015 to TAMP, it is for TAMP to independently examine the matter and pass Orders as per the Orders of the High Court dated 8.10.2014.</td></tr>
<tr><td>(xi).</td><td>Without prejudice to the above contentions in paragraphs 8, 9 & 10 the company submits that the Container storage charges levied prior to 06.07.1994 is reasonable and the same must be fixed for the period in question namely 06.07.1994 to August 2001.
In this connection, the following considerations are relevant:</td><td></td></tr>
<tr><td></td><td>(a). Port of Madras has a Statutory duty to provide Container storage Space. Sec. 42 of the Major Port Trusts Act enumerates the services that the Board may undertake and sec. 48 of the Act empowers the Board to fix the rates and the conditions for the services Tendered. Therefore, the rates levied must be commensurate with the services rendered.</td><td rowspan="4">The firm has repeated the submissions made by it vide its letter dated 24.1.2015 for which reply / remarks has already been furnished to TAMP vide letter dated 5.4.2015.</td></tr>
<tr><td></td><td>(b). It is to be noted that the delay in clearance of imported cargo is on account of the time consumed for inspection and the completion of the formalities by the Inspection Agencies and the Customs Authorities. The Importers /Consignees are not to be blamed for the delay. This plea is specifically raised by the company in its W.P. 14370 of 1995. This specific plea is not denied. In paragraph 3 of its Counter Affidavit, the Port Trust contends that it is for the Customs Authority to meet the allegation. The Collector of Customs is also a party to the Writ Petition and this specific plea of the company is not denied.</td></tr>
<tr><td></td><td>(c).The company/importers/consignees cannot be penalized for the delay committed by the other Departments of the Government.</td></tr>
<tr><td></td><td>(d). Admittedly, demurrage charges are levied on the goods containerised in the containers. The Container storage charges are</td></tr>
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	levied in addition. Thus, even if the Port Trust has authority to levy Container storage charges, it must be reasonable and cannot be exorbitant as demurrage charges are already collected.		Statutory Authority so that the same can be considered in the light of the orders of the Hon'ble High Court of Madras.
	(e). In fact it is admitted that the Container storage charges are not demurrage. If so, it must be reasonable.		
	(f). As stated above, the delay in clearance of the goods is only on account of the time consumed for inspection and completion formalities by the Inspection Agency and the Customs Authority. The exorbitant rate will exceed the cost of container of the cargo and will ultimately be confiscatory in nature and will not act as an incentive.		
	(g). It is the duty of the Port Trust to provide storage space for the cargo. If the Container storage charges are levied as an incentive as projected by the Port Trust, they must be reasonable and not arbitrary.		
	(h). The system of containerization of cargo emerged to facilitate easy loading and unloading of cargo and for convenient and effective handling of the goods stored in the premises of the port. Thus the major beneficiaries of containerization are the streamer agents and the port. The Company as consignee is levied with demurrnge charges for the cargo. The container storage charges cannot be levied on the consignee.	It is reiterated that as Chennai Port provides free days to clear the containers and when the same is not cleared even after the free days, then the container storage charges are levied. It is the responsibility of the Agents/Consignees to clear the containers within the free days after completing all the formalities.	
	(i). Under the guise of monitoring timely clearance of Containers by enhancing the container storage charges, the Chennai Port Trust cannot enriched itself unjustly at the cost of the consignee and for no fault of the consignee.	As already stated in reply to user comments, the intention of the Port is not profit making, but to clear the containers in time and to serve the Port users without any hassle so that the EXIM trade is not affected.	
	(j). The Port Trust constituted under Statue is required to perform the service and enjoys monopoly in its operations. The Port Trust cannot resort to fleecing of the consignees who are availing the services performed by the Port Trust under Statutory mandate.	Reply/ remarks already furnished in letter dated 5.4.2015.	
	(k). In fact, the Hon'ble Single Judge after going through the report of the Sub Committee has held that the Board of Trustees have not addressed themselves with the consequence arising out of such enhancement, The Hon'ble Judge	The firm has repeated the submissions made by it vide its letter dated 24.1.2015 for which reply / remarks has already been furnished to TAMP vide letter dated 5.4.2015.	

	has further held that the Minutes of the Meeting of the Sub Committee dated 09.08.1994 did not consider the problem of congestion and how it could be avoided. The Hon'ble Judge has held that the Port Trust has not approached the problem of congestion in a scientific and rational manner and that there is total non- application of mind by the Authorities concerned.		
	(l). The very attempt of the Port Trust to levy the charges in USD and to collect the same in Indian Rupee would indicate that the levy is arbitrary and has been undertaken with a view to penalize the consignees /importers.		
	(m). As stated above the Importers /Consignees are liable to pay the demurrage charges. The Container does not belong to them and is used for facility of operation. It will be illegal to collect the Container storage charges from the Consignees like the Petitioner Company and the same has to be collected from the person primarily benefited by the containerization.		

2.	**Chennai & Ennore Ports Steamer Agents Association (CEPSAA) and Shipping Corporation of India (SCI)**	**Reply furnished by CHPT**
(i)	At the outset, it is reiterated that the Chennai Port Trust (CHPT) would not be entitled in law to request TAMP to fix the tariff on the basis of the tariff fixed by ChPT, as per the Notification dated 19.07.1995. CHPT had made a very steep revision in the tariff which was published in the Gazette on 6.7.1994. The CHPT had thereafter constituted a sub-committee and on the basis of the recommendations of the sub-committee, a revised tariff was fixed and after approval from the Government of India, was notified in the Gazette on 19.07.1995. The 1st Notification dated 6.7.1994 was challenged by our clients in the Hon'ble Madras High Court in W.P. No. 11747 of 1994. During the pendency of the said Writ Petition, the 2nd revision of tariff was made by CHPT and notified in the Gazette on 19.7.1995. Since the subsequent revision was also excessive, the same was also challenged by us in W.P. No.5806 of 1997. Both the said Writ Petitions along with all the connected Writ Petitions were disposed of by the Hon'ble Mr. Justice P. Shanmugam by a common judgment dated 28.8.2000.	The CHPT has already stated in its letter dated 30.03.2015 that the proposal of the CHPT is to reiterate the rates arrived by the Subcommittee and approved by the Board vide B.R. No. 112 and 113 dated 17 August 1994.
(ii)	By the said judgment dated 28.8.2000, the Hon'ble Madras High Court struck down both the Notification dated 6.7.1944 and 19.7.1995 after holding that the said notification were illegal, arbitrary and unreasonable. While doing so, the Learned Judge	The CHPT filed Writ appeals before the Division Bench challenging the Order of the Single Judge dated 28.08.2000

	directed ChPT to apply /collect charges at the rates that existed prior to the two notifications which were quashed and gave liberty to ChPT to prescribe a reasonable increase in the rates after taking the relevant materials into consideration and after giving opportunity to the user association in accordance with law (paragraph 40 of the judgment). The Learned Judge, had referred to and relied on various judgments of the Superior Courts in India. The following are a few of the factual findings of the Learned Judge rendered in his judgments. (a) That the charges prescribed/levied by ChPT were not commensurate with the service rendered by them. (b) The high levy imposed by ChPT under the two Notifications would far exceed the cost of the container plus the cargo and such levy would he confiscatory in nature besides being unreasonable, arbitrary and without having any nexus with the object sought to be achieved. (c) By levying charges at such steep rates, the Container Lines or the Agents would abandon the cargo or may avoid the Chennai Port completely leading lo a situation where ChPT would be failing in their obligation to secure the ownership and control of material resources so as to subserve the common good. (d) The sub-committee constituted by CHPT had not addressed the issue with the consequences arising out of such steep enhancement and that there was total non-application of mind by the authorities concerned. (e) By levying demurrage charges on the cargo as well as container storage charges on the containers, CHPT was imposing a “double levy" which was clearly illegal. (f) The sub-committee had noted and recorded the fact that the delay in de-stuffing of the containers which led to the containers continuing to remain in the container yard, was only on account of the default on the part of the importers and delay in customs clearance and therefore the container lines or agents ought not to be held liable.	The Division Bench vide Order dated 8.10.2014 has disposed of the Writ Appeals with a direction to TAMP to decide the extent of revision of container storage charges. The Division Bench has neither set aside nor upheld the Order of the Single Judge dated 28.08.2000,but has directed TAMP decide the extent of revision of container storage charges. Hence, the CHPT reiterates its view that it is for TAMP to independently examine the matter and pass Orders. It is also relevant to mention here that the Hon’ble High court in the hearing held on 17.09.2014 sought the consent of the counsels of both the parties to refer the matter to TAMP. It was not informed at that point of time that the Order of the single Judge dated 28.082000 will prevail and the CHPT will make a fresh proposal to TAMP, which indirectly leads to a situation where the Writ appeals filed by the CHPT has no force or effect. The CHPT gave its consent only to refer the matter to TAMP and that TAMP would independently examine the matter and take a decision.
(iii)	The Learned Judge had thus quashed both the Notifications dated 1.7.1994 and 19.07.1995.	
(iv)	CHPT challenged the judgment dated 28.8.2000 before a Division Bench of the Hon’ble Madras High Court in W.A. Nos. 1746 and 1747 of 2000 and batch of appeal" which were disposed of by the Hon’ble Division Bench by Judgment dated	Comments to para 3 above may please be seen.

	8.10.2014. While doing so, the Hon'ble Division Bench after noticing the constitution of TAMP and since all the parties agreed to the suggestion of the Hon'ble Division Bench merely directed TAMP "to decide the issue of revision of charges". It would be significant to notice from the judgment of the Hon'ble Division Bench that the Hon'ble Division Bench, despite an oral request from the Counsel representing the CHPT, did not set aside the judgment dated 28.8.2000 or the factual findings contained therein. Consequently the judgment dated 28.8.2000 is still in force and both the notifications dated 1.7.1994 and 19.7.1995 which have been set aside as illegal, arbitrary and unreasonable are non-est and cannot be relied or acted upon by CHPT. Further what is more important is the fact that the revisions proposed were quashed by the Hon'ble Madras High Court on the ground that they suffered from illegality and that they were issued without any application of mind and consideration. Therefore, CHPT cannot seek revision on the basis of the two nonexistent notifications. ChPT cannot seek to rely on the said notification; merely on the basis that it is now not possible for them to prepare a fresh proposal for the period from 6.71994 till 21.11.2000 and that about 20 years have lapsed since the last revision was made.	
(v)	CHPT is also claiming in its further representation made on 30.03.2015 that the rates as notified on 19.07.1995 had been implemented from 22.11.2000 without any modification as per the directions of the Hon'ble Madras High Court. While making such a claim, it is clear that CHPT is referring to and relying on the interim order passed by the Hon'ble Madras High Court on the said date.	The point made by the CHPT that it has already implemented the rates as per Notification dated 19.07.1995, based on the Interim Order is only a submission made before TAMP to impress upon TAMP that the rates are not unreasonable. TAMP can take an independent view in the matter.
(vi)	In this regard it is submitted that it is a well settled legal position that upon the disposal of the main case like the Writ Appeals in the instant case, any interim order passed i.11 such main case- would merge with the final order and would not survive. Therefore, the Writ Appeals having been finally disposed off by the Hon'ble Division Bench by its order dated 8.10.2014, the interim order passed on 22.11.2000 would not survive. Further, even by the interim order passed on 22.11.2000 or by the final judgment dated 8.10.2014, the Division Bench of Hon'ble Madras High Court had not stayed the operation of the judgment of the Learned Judge or set aside the factual findings of the Learned judge. The Division Bench by its order dated 22.11.2000 had on!y stayed the direction of the Learned Single Judge to CHPT to refund the amount already collected and the Respondents in the Writ Appeal were directed to pay the rates as per the revised tariff from the	Comments furnished in respect of para 3 to 5 above may please be seen. The CHPT has not mentioned anywhere that it is collecting the rates as per the Notification dated 19.7.1995 upto date. The CHPT has only stated that it has collected the rates from 22.11.2000 onwards. When the terminal has been handed over to the BOT Operator in November 2001, it is implied that the CHPT would have collected the rates only till the terminal was operated by the CHPT. It is relevant here to point out that even the BOT operator was allowed to collect the rates prevailing as per the CHPT SOR, (as per TAMP Order dated 4.12.2001, notified on 10.12.2001) till a separate cost based tariff for CCTPL came into effect from 15 March 2002 (as per TAMP Order dated 6 March 2002,notified on 15 March 2002).

	date of passing of the order, namely 22.11.2000. CHPT was permitted by the said interim order to collect the charges of the revised tariff only from 22.11.2000. Owing to the privatization of the Container Terminal from August 2001, CHPT had stopped handling the containers at the Chennai Port and the question of collecting charges thereafter would not arise. However a Statement appears to have been made as though the charges at the revised Rates are being collected from 22.11.2000 upto date which is factually incorrect. CHPT, pursuant to the said interim order, could have collected only for a limited period of about 9 months.	
(vii)	CHPT has made a false and misleading statement in sub-para ii in its additional representation dated 31.03.2015 as though the Hon'ble Division Bench by its order dated 8.10.2014 had not upheld the judgment of the Learned Judge dated 28.8.2000 and that the CHPT has not been directed to make a fresh proposal to TAMP for the revision of tariff. Consequently, CHPT is still seeking to justify the levy of charges on the basis of the Notification dated 19.7.1995 despite of having been set aside as arbitrary, illegal, etc. It is submitted that a judgment of a Lower Court and the factual findings rendered by the Learned Judge would continue to be in force until they are set aside by the Appellate Court. A bare perusal of the judgment of the Hon'ble Division Bench dated 8.10.2014 would make it clear that the judgment dated 28.8.2000 of the Hon'ble Mr. Justice P. Shanmugam and the factual findings rendered in the said judgment have not been set aside. Consequently; if CHPT wants the tariff to be revised from 6.7.1994, as permitted by the Learned Judge in paragraph 40 of his judgment, CHPT has to either make a fresh proposal or submit for the consideration of TAMP, a reasonable tariff framed by any of the other Ports in South India, which would be in keeping with the directions of the Learned Judge in paragraph 40 of his judgment.	Comments to para 3 above may please be seen.
(viii)	In and around 1994 and 1995 when CHPT revised the tariff in respect of container storage charges, the other Ports similarly placed as CHPT were levying 'container storage charges which were much less. However, CHPT and the subcommittee constituted by CHPT revised the charges, which were exorbitant and arbitrary besides not being commensurate with the services which were rendered by CHPT. Therefore, it is submitted that in any event, CHPT should be directed by TAMP to place on record the' tariffs levied by the other Ports and the container terminal, around the time when CHPT revised the tariff viz.1994-1995 so that TAMP would be in a position to consider the	It is reiterated that the CHPT is of the view that the reasonableness or otherwise of the rates arrived at by the Sub-committee has now been entrusted to TAMP by the Hon'ble High Court. However, TAMP is also requested to take into account the circumstances prevailing at the Chennai Port's Container Terminal, at that point of time, which has been elaborated in the Board Agenda notes and the report of the Sub-committee, in this regard. It is further stated that the CCTPL, in the proposal filed with TAMP for fixation of tariff, after taking over the container

	same and fix the tariff rather than allowing CHPT to mechanically seek revision of the storage charges proposed by them by the notifications dated 6.7.1994 and 19.7.1995, as sought to be done by them now.	terminal from the CHPT, has made a mention about the congestion prevailing in the container Terminal due to delay in clearance of containers by the Trade / Agents. The points made by M/s TPL, as recorded in page 20 of the Tariff Order dated 6 March 2002, notified on 15 March 2002, (copy enclosed0, is summarized below: (i). Since the Trade is not taking delivery of their imports, its efficiency at the wharf is damaging container operations, and, chocking the import and the export yard capacity. (ii). If the boxes are not moved, its operations shall slowly come to a halt, as there will be no more space to store import containers. It shall result into loss of valuable foreign exchange of India. (iii). The CY is an interim storage area and not an area of long term storage of containers. The CY at the CHPT is only 15 hectares as against 28 hectares and 38 hectares at the NSICT and the JNPT.
(ix)	TAMP is also requested to consider the settled legal position and prior to fixing/ revising the tariff and decide as to whether a statutory Port Authority can levy / collect both demurrage charges in respect of the cargo and storage charges in respect of the containers, which has been held to be a double levy and would not therefore be justifiable. CHPT should also satisfy TAMP and TAMP should also consider whether CHPT would be justified in law in levying container storage charges on the Container Lines/their Agent when the reason for non-removal of the containers is either on account of the default of the importers or on account of delay on the part of the Customs Department in releasing the consignments. One other factor that should be borne in mind while revising the container storage charges is the justification for a steep revision of the container storage charges on the basis that such enhancement is warranted by the condition in the Port when the delay in removal is for no fault of the Container Lines or their Agents but on account of the failure of the Port to provide larger and adequate storage space. Further, invariably the containers remain in the port due to the intervention of the Customs Department or on account of illegality in the importation of the cargo for which we cannot be penalized.	The CHPT has furnished the details / additional information / clarification sought by TAMP.