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Tariff Authority for Major Ports

G No. 76 **New Delhi, 21 March 2013**

NOTIFICATION

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from the Chennai Port Trust for fixation of lease charge for the land acquired by it at Sriperumbudur, as in the Order appended hereto.

(Rani Jadhav)
Chairperson

TARIFF AUTHORITY FOR MAJOR PORTS
Case No. TAMP/64/2012-CHPT

Chennai Port Trust **- - -** **Applicant**

QUORUM

(i). Smt. Rani Jadhav, Chairperson
(ii). Shri. T.S. Balasubramanian, Member (Finance)

O R D E R
(Passed on this 24th day of January 2013)

This case relates to a proposal received from the Chennai Port Trust (CHPT) for fixation of lease charge for the land acquired by it at Sriperumbudur.

2.1. The main points made by CHPT in its proposal dated 8 October 2012 are summarized below:

(i). The CHPT has acquired 121.74 acres of land from the State Industries Promotion Corporation of Tamil Nadu (SIPCOT) on 99 years lease basis for development of dry port on BOT Basis under PPP model. The entire land is proposed to be allotted to the BOT operator/s for development of dry port facilities.

(ii). The land lease charge for the said land area has to be fixed as per the Land Policy guidelines 2010 announced by the Government.

(iii). As per Clause 6.3 (1) of the Land Policy guidelines, a Committee, headed by the Chairman, CHPT has been constituted for fixation of land lease charge for the above land.

(iv). The land lease charge for the above land has been worked out under various options prescribed under Clause 6.3(1)(b) of the land policy guidelines, 2010. Out of five options prescribed in the Land Policy Guidelines, the CHPT has considered the following 3 options:

(1). State Government ready reckoner of the land values in the area.

(2). Average rate of actual relevant transactions registered in last three years in the port vicinity, adding 2% escalation per annum.

(3). Any other relevant factor as may be identified by the port.

(v). As per option-1, the CHPT has considered the land lease charges at ₹1078/- per 100 sq. mtr. per month based on the State Government

Ready Reckoner. The working with regard to option-1 is given below:

Sl. No.	Details	Rates in ₹
1.	Survey No.1105 & 1228 (per sq. mtr.)	2155.00
2.	Lease rent @ 6% per annum	129.3
3.	Lease rent per month per sq. mtr.	10.775
4.	Lease rent per 100 sq. mtr.	1077.5
5.	**Approximately (Per 100 sq. mtr.)**	**1078**

(vi). As per option-2, the CHPT has considered the annual lease charges at ₹1078/-, based on the average rate of actual relevant transaction registered in last three years in the port's vicinity, adding 2% escalation per annum. The working with regard to option-2 is given below:

Sl. No.	Details	Rates in ₹	
		Survey no.1105 & 1105/2	**Survey no.1228/7 & 1409/24**
1.	Average rate per sq. ft. as furnished by Engineering Department	45.00	200.00
2.	Average rate per sq. mtr.	485.00	2155.00
2.	Lease rent @ 6% per annum	29.09	129.30
3.	Lease rent per month per sq. mtr.	2.42	10.775
4.	Lease rent per 100 sq. mtr.	242.44	1077.5
	Rounded off to	**242**	**1078**
6.	Escalation @ 2% per annum for 2012 (since rate furnished as on April 2012)	4.84	-
7.	Lease rent for 2012 per 100 sq. mtr.	247	1078
5.	**Approximately (Per 100 sq. mtr.)**	**247**	**1078**

(vii). (a). As per land policy guidelines of 2010, the land lease charges are to be fixed @ 6% on the market value of land. However, it is felt that fixing the annual value @ 6% on the market value can be made applicable only in the case of freehold land where the land cost will appreciate and land will continue to be in the possession of the Trust.

(b). In the present case, 121.74 acres of land have been acquired by CHPT from SIPCOT on 99 years lease basis with an initial lease charges of ₹100 Crores (apprx.). Since the amount invested by the CHPT is only for the lease period of 99 years and the land will revert back to the SIPCOT after the lease period, it is quite logical to recover the amount invested by the concessionaire by way of annual lease charges. Accordingly, under Option-3, the land lease charges works out to ₹4186/- per 100 sq. mtr. per month based on the recovery of the land lease charges and the interest. The working with regard to option-3 is given below:

Sl. No.	Item of work	Rates in ₹
1.	Actual cost of land for 121.74 acres paid on 21.9.2012	973920000
2.	Interest @ 12% for opportunity lost 10/2010 to 9/2012 for 24 months	233740800
3.	**Total (A)**	1207660800
4.	Stamp duty 2% of total land lease charges for 120.85 acres ₹ 96,68,00,000	19336000
5.	Registration Fees	20100
6.	**Total (B)**	19356100
7.	Stamp duty to be incurred for 0.89 acres @ 2% of land lease charges (i.e. 71,20,000)	142400
8.	Registration feed (approx.)	3000
9.	**Total (C)**	145400
10.	**Total cost incurred towards land (D)** (A + B + C)	1227162300
11.	Add : Interest @ 12% per annum for another 12 months (till entering LA) **(E)**	147259476
12.	Total cost to the port till entering LA	1374421776
13.	Market value assumed as total investment of the port (under option-5)	**1374421776**
14.	Less rental @ 6% per annum on market value as per land policy 2010 **(F)**	82465307
15.	Add : Equated annual payment to amortize the investment of the port along with interest 12% per annum over the remaining lease period of 96 years **(G)**	164933720
16.	Total lease charges to be recovered per annum for 121.74 acres (F+G) **(H)**	**247399027**
17.	Lease charges per acre per annum (H / 121.74) **(I)**	2032192
18.	Lease charges per sq. mtr. per annum (I / 4046) **(J)**	502.27
19.	Lease charges per sq. mtr. per month (J / 12) **(K)**	41.86
20.	Monthly lease rent per 100 sq. mtr. per month (K X 100)	4185.60
	Rounded off to (per 100 sq. mtr / month)	**4186.00**

(viii). The Committee noted that highest accepted tender value prescribed in the guidelines is not relevant in this case since the land is located at Sriperumbudur which is far away form the existing port land and also not contiguous land.

(ix). As far as rate arrived at by approved valuer, the Committe felt that appointment of valuer may not be necessary in this case as the land has been leased to the Port.

(x). The Committee perused the lease rental working under the three options as given above. After deliberations, the Committee has recommended a rate of ₹4,186/- per 100 sq. mtr. per month as per option-3.

(xi). The Committee also perused the land lease agreement entered by CHPT with SIPCOT and found that based on the certain clauses of the agreement, CHPT may have to incur some additional expenditure in future and hence suitable Clauses have been included in the draft Scale of Rates for land lease charges.

(xii). The matter is being placed before the Board and that on approval, a copy of the Board Resolution would be forwarded.

(Subsequently, the CHPT under cover of its letter dated 16 January 2013 has forwarded a copy of the Board Resolution dated 15 October 2012 ratifying the action taken to forward for the approval of TAMP, the proposal to fix lease rentals charge of ₹4186/- per 100 sq. mtr. per month for 121.84 acres of land.)

3. The CHPT has proposed the following to be included as Scale-1A after the existing Scale-1 before General Note in Miscellaneous Charges under Chapter – VI of its Scale of Rates:

SCALE-1A – Scale of Licence fee for allotment of land at Mappedu, Sriperumbudur

Item No.	Description of space	Unit	Licence fee
1.	Open space	100 sq. mtr. or part thereof	₹4,186/- per calendar month or part thereof

Notes to Scale-1A:

(i). The land area covered under the Scale-1A above is acquired by the port on long term lease from SIPCOT. Since the land has been taken by the Port on lease basis from SIPCOT any enhanced compensation for the lands acquired, cost of development and any escalation in cost of development have to be borne by the Allottee or alternatively, the lease charges shall be revised proportionately which shall be borne by the Allottee.

(ii). The Annual Maintenance charges for common amenities and facilities like roads, street lighting, water supply, sanitation, drainage, common buildings, gardens, avenue plants, parks, etc., if any, payable to the SIPCOT shall be separately borne by the Allottee and ensure adherence to the norms as prescribed by SIPCOT in this regard.

(iii). The Allottee shall use the land allotted for the purpose for which it is intended.

(iv). The General Note and Conditions for Licensing of space applicable for allotment of existing port lands, as given below, will also apply to the land covered under Scale 1A.

4.1 In accordance with the consultative procedure prescribed, the CHPT proposal dated 8 October 2012 was forwarded to the users/ user organisations and prospective applicants (as per the list provided by the CHPT) seeking their comments.

4.2. In this regard, only one of the prospective applicants viz., M/s. SJK Industries Private Limited (SJKIPL) has furnished its comments. A copy of the comments received from the SJKIPL was forwarded to the CHPT as feedback information. The response of the CHPT was not received till finalisation of the case.

5. Based on the preliminary scrutiny of the proposal, the CHPT was requested to furnish additional information/ clarifications on various points vide our letter dated 8 November 2012. The CHPT vide its letter dated 27 November 2012 has furnished replies to our queries. A summary of the queries raised by us and the response of CHPT thereon are juxtaposed below:

Sl. No.	Queries raised by us	Response from CHPT
I.	**General:**	
(i).	The CHPT to confirm that its proposal is in conformity with the Land Policy for Major Ports approved by the Government of India and made applicable to all major port trusts vide MOS letter No. PT-11033/4/2009-PT with effect from 13 January 2011.	It is confirmed that the proposal is in conformity with the Land Policy Guidelines. However, taking into account that the port has acquired the subject land on long-term lease basis (99 years) from SIPCOT and on completion of the lease period, the asset will not be belonging to the port, it is proposed to recover the investment made by the CHPT for acquiring the land over the lease period of 99 years from the lease rental charges from the BOT operators and accordingly the lease rental rates have been worked out.
(ii).	It may also be confirmed that the rate structure proposed by the CHPT is in accordance with end use as reflected in the Land Policy guidelines referred to above.	The land was acquired for 99 years on long lease period for the development of Dry Port and Multimodal Logistics Hub which was approved by the Ministry**.** Accordingly, the Tariff proposal has been sent for fixation of Land lease charges for the subject.
(iii).	If on any matter the present proposal deviates from the Land Policy Guidelines referred above, CHPT to furnish the details thereof and the reasons therefor.	Same as at Sl. No. (i) above.
(iv).	The tariff filing forms viz., Form – 1, Form – 2A and Form – 2B required to be furnished along with the proposal for revision of the Estate rentals is not found attached with the proposal. The CHPT to furnish the said forms along with the requisite details, duly filled in.	Since the subject proposal being partial revision, i.e. fixation of land lease charges for the land recently acquired by the port, the said cost statements are not considered necessary. However, it is informed that the additional income to the port on account of recovery of lease charges from the BOT operator at the proposed rate of ₹4186/- per 100 sq. m. per month will be to the tune of ₹ 24.74 crores per annum. The tariff filing forms would be submitted by the port while filing the proposal for general revision of estate rentals.
(v).	The CHPT to quantify and furnish the additional annual revenue estimated to be earned by it from the allotment of land at Sriperumbudur by way of levy of the proposed rates. In this regard, it is noteworthy that at the time of disposal of the General Revision proposal of CHPT in November 2010, the additional income estimated to be	As mentioned in the reply to the previous point, the additional revenue to the CHPT on account of recovery of lease rental for the land at Sriperumbudur will be ₹24.74 crores per annum. With regard to accounting of additional income for the current tariff cycle and

	earned by CHPT from the allotment of land at Sriperumbudur had not been anticipated and as such the same has not been accounted then at the time of disposal of the CHPT general revision proposal. The CHPT to propose suitable adjustments in its existing Scale of Rates approved in November 2010, so as to ensure a revenue neutral position to CHPT.	proposing adjustments in the existing Scale of Rates, it is stated that validity of the current tariff cycle expires on 31 March 2013. The CHPT would be earning additional lease rental income only from the date of award of Concession Agreement to the successful BOT operator. Since the process of selection of a BOT operator may take about one year, there will not be additional revenue to the port in the current tariff cycle ending 31 March 2013. Hence, the issue of adjustment of existing scale of rates may not arise.
II.	**VALUATION OF LAND:**	
(i).	Based on the stipulation contained in Clause 6.3 (1)(a)(i) of the Land Policy guidelines of 2010 to determine the market value of land based on the State Government Ready Reckoner, the CHPT under Option – 1 has determined the market value of land based on the plot of a land bearing survey no. 1105 and 1228, measuring about 200 sq. ft. each and classified as 'Residential class'. In this regard, the CHPT to clarify/ furnish the following:	
	(a). The CHPT to confirm whether the value of the 200 sq. ft. of plot of land is representative enough to determine the value of land for the entire area of 121.74 acres at Sriperumbudur.	The figure indicated in the second column of Annex-I of the proposal is the guideline value on Sq.ft. basis which is ₹ 200 per sq.ft. and it is not for 200 sq.ft. of land.
	(b). The land at Sriperumbudur is proposed to be allotted to the BOT operators (i.e. commercial purposes), whereas, value of the land has been determined by CHPT based on the plot of land classified as 'Residential class'. In view of the difference in the end use of the lands, the CHPT to explain how the same can be taken as base to determine the market value of land at Sriperumbudur	The market rate has been worked out based on the available authenticated value for residential / commercial land (Government Guide Line Value) in the vicinity of the proposed Dry Port.
(ii).	Based on the stipulation contained in Clause 6.3 (1)(a)(ii) of the Land Policy guidelines of 2010 to determine the market value of land based on the average rate of actual transactions registered in the last three years in the Dry port's vicinity, the CHPT under Option – 2 has determined the market value of land based on the sale value of plot of a land bearing survey no. 1105 and 1228, measuring about 1090 sq. ft. and 2100 sq. ft. respectively during the years 2010, 2011 and 2012. In this regard, the CHPT to clarify/ furnish the following:	
	(a). The CHPT to confirm whether the sale value of the 1090 sq. ft. and 2100 sq. ft. of plot of land is representative enough to determine the market value of land for the entire area of 121.74 acres at Sriperumbudur.	Yes.
	(b). It is not clear why there is substantial variation in the sale value of the said two plots of land in the Dry Port's vicinity. The	The guideline value has been revised from April 2012 and hence there is substantial variation.

	CHPT to clarify the position.	
(iii).	The reasons why the CHPT has not arrived at the market value of the land at Sriperumbudur by appointing an approved valuer, as stipulated in Clause 6.3 (1) (a) (iv) of the Land Policy guidelines of 2010, may be explained.	As the subject land is acquired by the port recently and the actual investment by the port is available, appointment of approved valuer to arrive at the market value is felt not necessary.
(iv).	Based on the stipulation contained in Clause 6.3 (1)(a)(v) of the Land Policy guidelines of 2010 to determine the market value of land based on any other relevant factor as may be identified by the port, the CHPT under Option – 5 has determined the market value of land based on the actual cost of land paid by it to acquire 121.74 acres of land. In this regard, the CHPT to clarify/ furnish the following:	
	(a). Documentary evidence in support of the cost of land amounting to ₹97.39 crores.	The CHPT has furnished a copy of the relevant extracts of the lease agreement entered with SIPCOT.
	(b). CHPT to explain the rationale behind adding interest at the rate of 12% towards opportunity lost for the period of 24 months between October 2010 to September 2012, and for another 12 months till the date of entering into License Agreement with the BOT operator to the cost of acquisition of land. It may be clarified whether the approach adopted by CHPT in this regard is as per Land Policy guidelines of Government.	The CHPT has paid an amount of ₹.100.13 crores to SIPCOT on 21.9.2010 for acquiring 125 acres of land on lease basis. However, after completing all the required formalities, the lease deed was executed and registered in the Sub-Registrar Office on 27.06.2012 for 120.85 acres. Further, the land is acquired by the port only for the purpose of development of Dry port through PPP mode and the entire land is proposed to be allotted to the BOT operator. In view of the above, interest @ 12% p.a. from the month of actual payment (October 2010) till the expected period of award of Concession Agreement (considered as October 2013) on the actual investment of the port is added to compensate the loss of interest earnings to the Trust on the amount invested. It is further stated that the interest rate of 12% p.a. may be considered reasonable taking into account that a maximum ROCE of 16% p.a. on investment is allowed as per TAMP guidelines.
	(c). While calculating the stamp duty, the CHPT is seen to have bifurcated the total area of 121.74 acres into two parts i.e. 120.85 acres and 0.89 acres and calculated the stamp duty separately for both the said areas. The reason for the same may be furnished.	Out of the total area of 121.74 acres, lease deed has been executed for 120.85 acres and registration expenses have been already incurred by the port. The registration of lease deed in respect of the balance area of 0.89 acres is yet to be done. Accordingly, the registration charge in respect of 0.89 acres has been considered based on the actual registration cost incurred for 120.85 acres on proportionate basis.
	(d). It is not clear how the amount towards amortised equated annual payment of ₹.16.49 crores has been worked out by CHPT. The CHPT to furnish detailed workings in this regard.	The equated amortisation amount of ₹16.49 crores has been worked out on the assumption that the port has borrowed the funds through loan @ 12% p.a. for a period of 99 years, repayable in equated annual instalments along with interest. A working sheet in this regard is already furnished along with our proposal. The CHPT has furnished a

		copy of the workings.
	(e). The CHPT to explain the rationale behind adding the equated annual payment of ₹.16.49 crores along with interest to amortise the investment of the port for the remaining lease period of 96 years to the annual lease rental arrived at ₹.8.25 crores, to arrive at the total lease charges to be recovered per annum for the area of 121.74 acres.	As per Land Policy Guidelines 2010 the land lease charges are fixed @ 6% on the market value of land. However, it is felt that return @ 6% on the market value can be made applicable only in the case of freehold land where the land cost will also appreciate and land will continue to be asset of the Trust. In the present case, the land is acquired from SIPCOT on 99 years lease basis with an initial lease charge of ₹100 crores (approx). The amount invested by the Trust will not have any value after the lease period of 99 years since the land will revert back to the SIPCOT after the lease period. In view of the above, it will be quite logical to recover the amount invested from the concessionaire by means of annual lease charges. Accordingly, the equated annual amortisation amount of ₹.16.49 crores is also proposed to be recovered through land lease charges.
III.	**<u>SCALE OF RATES:</u>**	
(i).	The proposed Note (i) to Scale – 1A requiring the allottee of land to bear any enhanced compensation, cost of development and any escalation in the cost of development, appears to be a matter between the port and the allottee. The same need not form part of the Rent Schedule to be approved by this Authority.	The lease agreement between the port and SIPCOT envisages payment of enhanced compensation, etc. Since this is to be recovered from the allottees, the proposed note (i) is required.
(ii).	The CHPT has proposed a general conditionality in its proposed draft Rent Schedule stating that the General note and conditions for licensing of space applicable for allotment of existing port lands will also apply to the land at Sriperumbudur. In this regard, it is relevant here to mention that the conditionalities prescribed in the existing Rent Schedule includes conditionalities governing the licensing of space, covered space, warehouses for a period of 11 months, one year to three years. However, incase of lands at Sriperumbudur, it would be a case of allotment of land to the BOT operator presumably for the entire project period of 30 years. In view of the above, it may be clarified whether it is advisable to have a blanket condition stating that the other existing terms and conditions would also apply to lands at Sriperumbudur. The CHPT to prescribe suitable fresh set of conditionalities, to govern the rates chargeable for the land envisaged to be allotted at Sriperumbudur to the BOT operator.	As observed by TAMP the general conditionality at Note (iv) is deleted. With regard to prescription of fresh set of conditionalities, it is stated that all the conditionalities prescribed in the Land Policy Guidelines 2010 is made applicable by virtue of General Note incorporated under the Schedule of Rates. Accordingly, no fresh set of conditionalities is prescribed at this stage.

6.1. A joint hearing on the case in reference was held on 30 November 2012 at the CHPT premises. The CHPT made a power point presentation of its proposal. At the joint hearing, CHPT and M/s. Simplex Projects Limited have made their submissions.

6.2. As agreed at the joint hearing, the CHPT was requested to take action on some points. The CHPT has responded. The points raised by us and reply of the CHPT thereon are tabulated below:

Sl. No.	Points raised by us	Reply of CHPT
(i).	In determination of market value for fixation of land lease charges for the land acquired by the CHPT from SIPCOT on long term lease basis for 99 years for development of dry port, the CHPT has considered the actual cost of land, stamp duty, registration fees and 12% interest for loss of opportunity for 24 months from October 2010 to September 2012. Further interest at 12% has also been considered for another 12 months beyond September 2012 till entering the Licensee Agreement with the BOT operator. In this regard, the CHPT to confirm whether the approach adopted by it in determination of market value is as per the Land Policy Guidelines for Major Ports 2010.	Regarding adding of interest at the rate of 12% as an opportunity cost till the expected date of award of contract to the BOT operator, the CHPT stated that this is a opportunity cost which the port would have otherwise earned by way of returns from the investment made for leasing of the land. Therefore, it has been added to the lease cost and the market value has been ascertained under option (v) of Land Policy Guidelines for Major Ports 2010. Hence, adding of interest at the rate of 12% is considered reasonable so that the port does not lose any amount while fixing the lease rentals by the port. TAMP is once again requested to consider the approach adopted by the port and approved the proposed lease rental charges for dry port land.
(ii).	The CHPT has considered 6% per annum on the market value so determined for lease rentals. Further, the CHPT envisages recovery of amortized amount of investment made by CHPT to acquire the said land along with interest component by way of equated monthly instalments from the allottee, apart from 6% on the market value assumed by the CHPT. The CHPT to examine whether its approach of considering the equated monthly instalment also in calculation of lease rental apart from 6% on the market value is as per the stipulation made in the Land Policy Guidelines 2010 for calculation of lease rental. The CHPT to align its proposal with the Land Policy Guidelines of 2010 and furnish its response by 7 December 2012.	Taking into account that the port has acquired the subject land on long term lease basis (99 years) from SIPCOT and on completion of the lease period the asset will not be belonging to the port, it is proposed to recover the investment made by the Trust for acquiring the land over the lease period of 99 years from the lease rental charges from the BOT operators and accordingly the lease rental rates have been worked out. If any other approach is adopted then the Trust may end up recovering less that what is incurred by the Port with a reasonable return. Therefore, TAMP is once again requested to consider the proposal as such and fix the lease rentals accordingly.
(iii).	If the review results in a change in the earlier proposed lease rentals, the CHPT to forward a copy of its revised proposal to the concerned stake holders requesting them to furnish their comments directly to CHPT and TAMP within a week. The CHPT was also requested to furnish its comments to TAMP on the comments of the users, if any, on the revised proposal immediately thereafter.	(The CHPT does not appear to have revised its proposal.)

7.1. As seen from the above position, it was noticed that the CHPT has not pointedly replied to the point whether the approach adopted by it in determining the market value of land is in line with the Land Policy Guidelines of 2010 announced by the Government. It is noteworthy that the Land Policy Guidelines of 2010 stipulate determining lease rentals for the port lands. It does not differentiate between a freehold land or a leasehold land for determination of market value of land. The Land Policy Guidelines do not stipulate consideration of interest component for determination of market value or recovery of cost relating to acquisition of land alongwith interest from the lessees. The approach adopted by the CHPT did not appear to fall within the purview of the Land Policy Guidelines of 2010.

7.2. Considering the position that unless the licence fee for the lands at Sriperumbudur is fixed, it may not be possible to dispose of an another proposal filed by the CHPT for fixation of upfront tariff for the dry port, which has been earmarked by Government for award during 2012-13 as the licence fee for the lands at Sriperumbudur would have a bearing on the upfront tariff to be fixed for the dry port, it was brought to the notice of the Ministry of Shipping (MOS) vide our letter dated 21 December 2012 that the Land Policy Guidelines of 2010 does not cover the methodology followed by CHPT in determination of market value and in determination of lease rental for the Sriperumbudur Land. Since Clause 6.7 of Land Policy Guidelines of 2010 empowers the Ministry to exempt or relax any of the provisions mentioned in the Land Policy 2010 in public interest, the MOS was requested to give suitable direction to this Authority to consider the proposal of the CHPT under any special dispensation or in relaxation of Land Policy 2010 provisions, with a copy endorsed to the CHPT for follow up action.

7.3. The MOS vide its letter dated 10 January 2013 has responded to our letter dated 21 December 2012.

To summarise the response of the MOS, the MOS has stated that as per the Article 49(1) of Major Port Trusts Act, 1963, TAMP shall, from time to time by notification in the Official Gazette, frame a scale of rates on payment for any property belonging to, or in the possession or occupation of, the Board, or any place within the limits of port or the port approaches for the purpose mentioned at sub-clauses (a) to (d). Thus, all port lands irrespective of freehold or leasehold appear to come under the jurisdiction of TAMP for fixation of tariff. Further, Land Policy, 2010 also does not differentiate between freehold land and leasehold land.

Bringing out the above position, the MOS has requested this Authority to follow the extant land policy guidelines for fixing the lease rentals for the land proposed to be allotted by CHPT to the concessionaire at Mappedu near Sriperumbudur and pass appropriate orders and that there is also no need for any special dispensation or relaxation in the matter.

7.4. In this connection, the CHPT also vide its letter dated 12 January 2013 has made the following main submissions:

(i). It is decided that the outright payment made to SIPCOT towards the lease of the land for 99 years may be reckoned as the market value, as the land has been taken on lease during October 2010.

(ii). The upfront lease charges paid to the SIPCOT for 99 years alongwith stamp duty and registration charges works out to ₹99,34,21,500/-. The interest on this amount for the period from October 2012 to March 2013 (likely date of award of PPP project) works out to ₹29,80,26,450/-, which may also be considered to arrive at market value.

(iii). The total amount, thus, works out to ₹129,14,47,950/-, as given below:

Sl. No.	**Details**	**Amount in ₹**
1.	Actual cost of the land	97,39,20,000
2.	Stamp duty @ 2% on total lease charges (₹1,93,36,000 + ₹1,42,400/-)	1,94,78,400
3.	Registration charges (₹ 20,100 + ₹ 3,000)	23,100
	Total	**99,34,21,500**
4.	Interest @ 12% per annum from October 2010 to March 2013	29,80,26,450
	Total	**129,14,47,950**

(iv). As regards the 14.96 acres of land, it is stated that this is a back-up area to the BOT Operator for creation of allied/ ancillary facilities.

8. 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

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

(i). The CHPT has acquired 121.74 acres of land at Sriperumbudur from the State Industries Promotion Corporation of Tamilnadu (SIPCOT) on 99 years lease basis. The entire area of land is proposed to be allotted by the CHPT to the Concessionaire who would be developing and operating the Dry Port under Public Private Partnership (PPP) mode. It is for the said land that the CHPT has filed a proposal for fixation of the lease rentals. The proposal of the CHPT has the approval of its Board of Trustees.

(ii). This Authority is mandated to follow the Land Policy Guidelines issued by the Government from time to time as stipulated in Clause

8 of the tariff guidelines of March 2005 issued by the Government, as a policy direction under Section 111 of the MPT Act, 1963, for determining the lease rentals for the port lands.

(iii). The Land Policy Guidelines of 2010 issued by the Government vide Ministry of Shipping (MOS) letter No. PT-11033/4/2009-PT dated 4 March 2011 and made applicable to all the major port trusts is in force now. The said Guidelines, *interalia*, stipulate that the Scale of Rates for the lands should be arrived at taking 6% of the market value as rent per annum.

It is inferable from the submissions made by the CHPT that its proposal for calculation of lease rentals deviates from the Land Policy Guidelines position. The CHPT, apart from considering lease rental calculated at 6% on the market value of the land, also envisages equated annual recovery of the cost of land along with interest.

As stated earlier, the land policy guidelines call for calculating lease rentals at 6% of the market value only. The Land Policy does not permit recovery of any amount other than 6% of the market value. The CHPT is of the opinion that 6% of the market value can be made applicable only in the case of freehold land, where the land cost will appreciate and land will continue to be in the possession of the port. However, since the land acquired by the CHPT is a leasehold land, fixation of lease rentals at 6% on the market value alone cannot be made applicable, according to the port.

In this connection, it is to be recognised that the Land Policy 2010 of the Government does not differentiate between leasehold land and freehold land for determination of lease rentals. It is noteworthy that even with reference to an advice sought from the Government, the Government has categorically stated that the Land Policy Guidelines 2010 does not differentiate between freehold land and leasehold land.

Since the methodology adopted by the CHPT for calculation of lease rentals deviates from the formula prescribed in the Land Policy Guidelines of 2010 in this regard and keeping in view the request made by the Government to follow the extant Land Policy Guidelines to determine the lease rental for the land at Sriperumbudur, this analysis proceeds further to fix lease rentals following the Land Policy Guidelines of 2010.

(iv). The Land Policy Guidelines of 2010 lays down the procedure and the methodology to be adopted for determining the market value and the lease rental of the port lands. As per Clause 6.3(1) of the Land Policy Guidelines, the market value of land can be determined taking into consideration any or all of the factors like (i) State Government's ready reckoner value, (ii) the average rate of actual relevant transactions that took place in last three years for the lands in the port's vicinity, adding 2% escalation per annum, (iii) highest accepted tender value of port lands for similar transaction, (iv) rate arrived at by an approved valuer and (v) any other relevant factors as may be identified by the port. The lease rent has to be fixed at 6% of the market value of the land so determined and the rate is to be escalated by 2% per annum till such time the rate is revised with approval of this Authority.

(v). While according approval to the lease rental proposals of other major ports trusts, this Authority had taken a view that it would be appropriate for a Port Trust to assess the market value under all options given in the Land Policy guidelines and derive lease rentals based on the one which is most beneficial to the port. The CHPT has determined the market value of the land at Sriperumbudur as per three factors listed in the preceding paragraph viz.,

(a). State Government Ready Reckoner.

(b). Average rate of actual transactions registered in the last three years in the Dry port's vicinity.

(c). Any other factor as may be identified by the port.

As the said land has been acquired by the port in the recent past and since the actual investment by the port is available, the CHPT has reported to have not felt the need to arrive at the market value for the said land by appointing an approved valuer, which is the fourth option available to the port to assess the market value of the land.

Since the land is located at Sriperumbudur which is far away from the existing port land and also not contiguous land, determination of the market value of the land based on the highest accepted tender value as per the fifth option prescribed in the guidelines is not found relevant in this case by the CHPT.

(vi). The approach adopted by CHPT in valuation of its land at Sriperumbudur under the three options and to arrive at the proposed lease rentals thereon are summarized below:

(a). As per the stipulation contained in Clause 6.3 (1)(a)(i) of the Land Policy guidelines of 2010 to determine the market value of land based on the State Government Ready Reckoner, the CHPT under factor – 1 has determined the market value of land based on the State Government guideline value of plot of land classified as 'Residential class'.

To a query to explain the rationale to consider the value of the Residential class plot of land as base to determine the market value of land at Sriperumbudur for allotment to the BOT operator (i.e. commercial purposes), the CHPT has clarified that the market rate has been worked out based on the available authenticated value for residential/ commercial land (Government Guide Line Value) in the vicinity of the proposed Dry Port.

The Guideline Value for the said plot of land is ₹2155/- per sq.m. Considering 6% of the said value of the land to be the lease rental, the lease rental has been worked out by the CHPT at ₹1078/- per 100 sq.m per month.

(b). As per the stipulation contained in Clause 6.3 (1)(a)(ii) of the Land Policy guidelines of 2010 to determine the market value of land based on the average rate of actual transactions registered in the last three years in the Dry port's vicinity, the CHPT under factor – 2 has determined the market value of land based on the sale value of two plots of land admeasuring about 1090 sq. ft. and 2100 sq. ft. respectively during the last three years, 2010, 2011 and 2012.

The sale value of one plot of land during the years 2010-2011 is seen to be about ₹20 lakhs per acre and the sale value of another plot of land during the year 2012 is seen to be about ₹87 lakhs per acre. With regard to the substantial variation in the sale value of the said two plots of land in the Dry Port's vicinity, the CHPT has stated that the revision in the Guideline value from April 2012 has led to the substantial variation.

As seen from the workings furnished by the CHPT, the CHPT has considered the sale value of the transactions during the years 2010, 2011 and 2012. Applying the escalation factor of 2% on the said sale value, the CHPT has updated the sale value as of the year 2012. Escalating the value of land by 2% per annum is found to be in line with one of the factors listed under Clause 6.3(1)(ii) of the Land Policy Guidelines for assessment of market value of land. Considering 6% of the market value as lease rental, the CHPT has worked out lease rental to the tune of ₹247 per 100 sq.m per month for one plot of land and ₹1078 per 100 sq.m per month for another plot of land. It has, however, not worked out the average lease rental. After rectifying some minor inconsistencies observed in the workings of CHPT, the average lease rental works out to ₹525 per 100 sq.m per month.

(c). (i). The CHPT initially determined the market value of land taking into account the actual cost paid by it to acquire 121.74 acres of land, Stamp Duty, Registration Fee and interest at the rate of 12% being the opportunity reportedly lost for the period of 36 months (October

2010 to September 2013) being the date of acquiring the land till the date of entering into License Agreement with the BOT operator, under ‘any other factor’ as per the stipulation contained in Clause 6.3 (1)(a)(v) of the Land Policy guidelines of 2010 to determine the market value of land.

On the value of land so arrived at, CHPT has considered 6% per annum being the lease rental, as stipulated in the guidelines. However, as brought out earlier, the CHPT has felt that fixing the rental at 6% on the market value can be made applicable only in the case of free hold land where the cost of land will appreciate and land will continue to be in the possession of the port. Since the amount invested by the CHPT is only for the lease period of 99 years and thereafter since the land will revert back to the SIPCOT after the lease period, as reported by the CHPT, the port has also envisaged to recover the invested amount along with interest at 12% per annum over the remaining lease period of 96 years (99 years – 3 years). In nutshell, lease rental at 6% per annum on the value of the land as per Land Policy Guidelines of 2010 and equated annual amount to amortize the investment of the port along with interest at 12% per annum over the remaining lease period of 96 years have been considered to calculate the lease rental. As per the above methodology adopted by the CHPT, the monthly lease rental per 100 sq. mtr has been worked out at ₹4186/-.

Earlier, the CHPT has considered interest component for 36 months from October 2010 to September 2013. In the revised workings, the CHPT has considered interest component for a period of 30 months from October 2010 to March 2013, the other components like cost of acquisition, stamp duty and registration fees remaining unchanged. Further, the CHPT has requested to treat the aggregate amount (cost of acquisition, stamp duty, registration fees and interest component for 30 months) of ₹12914.48 lakhs as the market value of the land. This revised calculation furnished by the port has been taken into account to determine the lease rental under this factor, subject to the position explained in the following paragraphs.

With regard to the interest component considered by the CHPT in the determination of the market value of land, it is to be noted that the Land Policy Guidelines of 2010 do not provide for consideration of compensation towards opportunity lost in the determination of market value of the land.

At the same time, it is noteworthy that the CHPT has acquired the land at Sriperumbudur in October 2010. Therefore, it is appropriate to take into account an element of escalation in the said cost of land (cost of acquisition + stamp duty + registration) for the intervening period of two years @ 2% per annum, in line with one of the factors listed under Clause 6.3(1)(ii) of the Land Policy Guidelines for assessment of market value of land, which provides for updation of the value of land to the current level by applying 2% escalation per annum. The updated market value of land works out to ₹9934.22 lakhs.

(ii). With reference to determination of license fee/ lease rental, Clause 6.3.(1)(b) of the Land Policy - 2010 requires calculation of the lease rental at 6% of the market value. However, the CHPT has considered recovery of the cost of land along with interest over the remaining lease period (96 years) on the ground that the land acquired by it is lease hold land and not freehold land. In this connection, it is to be noted that the Land Policy Guidelines – 2010 has provided a specific formula for calculation of lease rentals. Further, the Government policy does not differentiate between a freehold land and lease hold land for determination of lease rental, as also held by the Government.

The approach adopted by the CHPT for calculation of lease rental is not in line with Land Policy 2010 provisions. Though Section 49 of the Major Port Trusts Act mandates this Authority to frame Scale of Rates and the statement of conditions for the property belonging to or in possession or occupation of the Major Port Trust, this Authority is guided by the provisions of the Land Policy Guidelines to determine the lease rentals. The Land Policy Guidelines of 2010 does not confer any power on this Authority either to deal with the proposal under a special dispensation or in relaxation of Land Policy 2010 provisions.

When the approach adopted by the CHPT for calculation of lease rentals not being in line with the stipulation contained in the Land Policy Guidelines of 2010 and since the CHPT maintained its position, the matter was referred to the Government for its advice, quoting the relaxing provision available to the

Government as provided under Clause 6.7 of the Land Policy 2010 to exempt or relax any of the provisions mentioned in the Land Policy 2010 in public interest. As stated by the Government in this connection, Land Policy Guidelines of 2010 does not differentiate between freehold land and leasehold land and the Government has stated that there is no need for any special dispensation or relaxation in the matter. It has also requested this Authority to proceed with the fixation of lease rentals for the lands at Sriperumbudur by following the extant Land Policy Guidelines and exercising the powers conferred on this Authority by Section 49 of the MPT Act.

Incidentally, even the prospective applicants like M/s. SJK Industries Private Limited (SJKIPL) and M/s. Simplex Projects Limited for the Dry Port, have objected to recovery of the cost relating to acquisition of land along with interest from the BOT operator.

Given that the Government has requested this Authority to fix the lease rentals for the lands at Sriperumbudur by following the extant Land Policy Guidelines and since the Land Policy Guidelines do not provide for considering any cost recovery component in the calculation of lease rentals, the lease rentals for the CHPT lands at Sriperumbudur is calculated @ 6% on the modified market value of land of ₹9934.22 lakhs, which works out to ₹1049/- per 100 sq. m per month.

(vii). The workings to determine the lease rentals under the three different factors, as explained in the preceding paragraphs, is attached as **Annex-I**.

(viii). As stated earlier, while according approval to the lease rental proposals of other major ports trusts, this Authority had taken a view that it would be appropriate for a Port Trust to assess the market value under all factors given in the Land Policy guidelines and derive lease rentals based on the one which is most beneficial to the port. Thus, the highest lease rental among all the three factors is prescribed. Accordingly, the highest lease rental among all the three factors is seen to be ₹1078 per 100 square meters per month, determined based on the market value as reflected by the Government Guideline Value furnished by the CHPT. Hence, the rate of ₹1078 per 100 square meters per month is prescribed as the lease rental for the lands of CHPT at Sriperumbudur.

(ix). It may be recalled that this Authority has passed an Order in November 2010 revising the Scale of Rates of CHPT. Since the

Order of November 2010 considered the cost position for the period upto 31 March 2013, the validity of the tariff so approved was prescribed till 31 March 2013. Since the additional income estimated to be earned by CHPT from the allotment of land at Sriperumbudur had not been anticipated then, the same had not been factored then, at the time of disposal of the CHPT general revision proposal.

As reported by CHPT, it would be earning lease rental income from the lands at Sriperumbudur only from the date of award of Concession Agreement to the successful BOT operator. Since the process of selection of a BOT operator may take about some more time as reported by the CHPT, lease rental revenue there from will not accrue to the port in the current tariff cycle ending 31 March 2013. Thus, no adjustment in the existing Scale of Rates of CHPT approved in November 2010 is found necessary in the current tariff cycle.

(x). The CHPT has proposed Notes (i), (ii) and (iii) to Scale – 1A requiring the allottee of land to bear any enhanced compensation, cost of development and any escalation in the cost of development and payment of maintenance charges for common amenities to SIPCOT by the Allottee, the allottee ensuring adherence to the norms prescribed by the SIPCOT and the allottee to use the land for the purpose for which is allotted. The said conditions are approved since the said conditions involve financial implication which may have impact on the part of the BOT operator, which is felt necessary to be made known to the bidders upfront before completion of the bidding process.

(xi). As per Clause 6.3(1)(d) of the Land Policy Guidelines of 2010, the Rent Schedule is subject to revision after every five years. Similarly, as per Clause 6.3(1)(c) of the Land Policy Guidelines of 2010, the Scale of Rates is to be escalated by 2% per annum. This provision has been incorporated as conditionality suitably under Scale – 1A.

(xii). As brought out earlier, the CHPT envisages to allot the land at Sriperumbudur to the successful BOT operator for a long period of 30 years. As per the letters dated 29 August 2011 and 20 December 2011 received from the Ministry of Shipping conveying some decisions of the Government, sale or long term lease of land belonging to the Government or Government controlled statutory authorities would need specific approval of the Government except the cases of transfer of land from one Central Government department/ Ministry to another.

Further, the Land Policy Guidelines of 2010 are under review by the Government. The matter has been referred to the Government vide our letter dated 27 January 2012 seeking clarification whether this Authority can proceed with the disposal of the proposals received from the major ports for revision of their estate related charges based on the Land Policy guidelines of 2010. Since the lease rentals approved incase of lands at Sriperumbudur would have a bearing on the proposal filed by CHPT for fixation of Upfront tariff for the Dry Port and keeping in view the importance given by the Government for finalization of upfront cases on priority basis, this Authority disposes off the proposal of CHPT for fixation of lease rentals for the lands at Sriperumbudur in line with the extant Land Policy Guidelines of 2010. However, if the exercise of review of Land Policy Guidelines of 2010 has an impact on the lease rentals and the conditionalities approved for the lands at Sriperumbudur, the CHPT is advised to come up with a suitable proposal in this regard. Further, the CHPT is also advised to keep in view the decision of the Government regarding long term lease of land at Sriperumbudur.

(xiii). The CHPT has proposed to incorporate the Scale of Licence fee for allotment of land at Sriperumbudur as part of its existing Scale of Rates. However, it is to be noted that the validity of the existing Scale of Rates of CHPT expires on 31 March 2013 and the CHPT has already been advised to file proposals for general revision of its Scale of Rates as well as for the Estate rentals. If the Licence fee for Sriperumbudur land is prescribed as part of the existing Scale of Rates, there will be conflict with regard to validity period of the existing Scale of Rates and the Licence fee now prescribed for Sriperumbudur land. Hence, it is felt appropriate to prescribe Licence fee for Sriperumbudur land as a separate Rent Schedule, independent of the existing consolidated Scale of Rates of CHPT.

9.1. In the end, and for the reasons given above, and based on a collective application of mind, the following is approved:

“ **RENT SCHEDULE FOR THE ALLOTMENT OF LAND AT MAPPEDU, SRIPERUMBUDUR.**

Item No.	Description of space	Unit	Licence fee
1.	Open space	100 sq. mtr. or part thereof	₹1078/- per calendar month or part thereof

Notes:

(i). The land area covered under the Scale-1A above is acquired by the port on long term lease from SIPCOT. Since the land has been taken by the Port on lease basis from SIPCOT any enhanced compensation for the lands acquired, cost of development and any escalation in cost of development have to be borne by the Allottee or alternatively, the lease charges shall be revised proportionately which shall be borne by the Allottee.

(ii). The Annual Maintenance charges for common amenities and facilities like roads, street lighting, water supply, sanitation, drainage, common buildings, gardens, avenue plants, parks, etc., if any, payable to the

SIPCOT shall be separately borne by the Allottee and ensure adherence to the norms as prescribed by SIPCOT in this regard.

(iii). The Allottee shall use the land allotted for the purpose for which it is intended.

(iv). The Rate is subject to revision every five years.

(v). The Rate is to be escalated by 2% per annum."

9.2. The above Rent Schedule will become effective after expiry of 30 days from the date of notification of the Order in the Gazette of India and shall be in force for five years. The approval accorded will automatically lapse thereafter unless specifically extended by this Authority.

(Rani Jadhav)
Chairperson

Annex - I

DETERMINATION OF LEASE RENTALS FOR THE LAND OF CHENNAI PORT TRUST AT SRIPERUMBUDUR

i Option - I - State Government Ready Reckoner

	Amt in ₹
Government Guideline Value of the plot of Land (per sq.m	2155
Lease Rental @ 6%	129.3
Lease Rental per sq.m per month	10.775
Lease Rental per 100 sq.m per month	**1078**

ii Option - II - Average rate of actual transactions registered in the last three years in the Dry port's vicinity

		Amt in ₹			Amt in ₹	
	Plot no. 1	**Plot no. 2**	**Plot no. 3**	**Plot no. 1**	**Plot no. 2**	**Plot no. 3**
Year of transaction	2010	2011	2012	2010	2011	2012
Sale Value of the plot of land (per sq.ft)	40	50	200	40	50	200
sale Value of the plot of land (per acre)	1742400	2178000	8712000	1742400	2178000	8712000
Sale Value after Escalation @ 2% per annum	1812793	2221560	8712000	1999404		8712000
Average sale value of last three years (per acre)		4248784.32			3570468.00	
Average sale value of last three years (per sq.m)		1049.89			882.27	
Lease Rental @ 6%		62.99			52.94	
Lease Rental per sq.m per month		5.25			4.41	
Lease Rental per 100 sq.m per month		**525**			**441**	

iii Option - III - Cost of acquisition of land on lease

	Amt in ₹
Actual cost of 121.74 acres of land in the year 2010	973920000
Stamp Duty	19478400
Registration	23100
Cost of 121.74 acres of land	993421500
Cost of land after Escalation @ 2% for the year 2011	1013289930
Cost of land after Escalation @ 2% for the year 2012 for 121.74 acres	1033555729
Cost of 1 acre of land	8489861.41
Cost of 1 sq. m of land	2097.86785
Lease Rental @ 6%	125.872071
Lease Rental per sq.m per month	10.4893393
Lease Rental per 100 sq.m per month	**1049**

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SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS / DIFFERENT USER ORGANISATIONS / BIDDERS AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY.

TAMP/64/2012-CHPT	:	**Proposal from the Chennai Port Trust (CHPT) for fixation of lease charges for the land acquired by the CHPT at Sriperumbudur.**

A summary of main comments received from only one of the prospective applicants viz., M/s. SJK Industries Private Limited (SJKIPL) are summarised below:

(i). The calculation with respect to upfront lease charges fixation will not be workable for the CFS calculation assumption.

(ii). The fixed lease charges for the land at the rate of ₹20 lakhs per acre as per the guideline and project viability including this, does not come as a suitable proposition.

(iii). This should be treated as a capital cost incurred by Chennai Port and the SJKIPL need to re-assess the lease rental calculation. The income payable to CHPT should be on revenue sharing basis rather than upfront lease charges.

2. A joint hearing on the case in reference was held on 30 November 2012 at the CHPT premises. The CHPT made a power point presentation of its proposal. At the joint hearing, CHPT and M/s. Simplex Projects Limited have made the following submission:

M/s. Simplex Projects Limited

(i). Port will get back its cost of acquisition of the land in 6 years through it had obtained the land on lease from SIPCOT for 99 years. The BOT operator is burdened with huge cost implications.

(ii). Out of three different locations, two areas are earmarked as Custom bound areas and the third area of around 15 acres is identified as non-Custom bound area. It is not known whether the BOT operator is free to do whatever activity at the 15 acre of land.

Chennai Port Trust

(i). 15 acre area has been left out to provide certain other ancillary facilities like quarters, office complex, repair area etc.

(ii). Both the custom bounded area will be under the control of the same BOT operator.

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