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TARIFF AUTHORITY FOR MAJOR PORTS

G. No.18

New Delhi, 6 February 2012

NOTIFICATION

In exercise of the powers conferred under Sections 48, 49 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal from the Chennai Port Trust for fixation of rate for allotment of Bubble Structure for storage of Coal on transit basis, as in the Order appended hereto.

(Rani Jadhav)
Chairperson

Tariff Authority for Major Ports
Case No. TAMP/43/2011-CHPT

Chennai Port Trust

Applicant

ORDER

(Passed on this 6th day of January 2012)

The Chennai Port Trust (ChPT) has filed a proposal for fixation of rate for allotment of Bubble Structure for storage of Coal on transit basis. The salient features of the proposal are summarized below:

- (i). The port has constructed a bubble structure for storage of Coal on transit basis to reduce the pollution level. The bubble structure is a framework of iron pillars, closed at the top and side open. The area of the bubble structure is 11,829 sq. m.
- (ii). The ChPT initially arrived at a rate of ₹172.57 per sq. m. per month on cost plus approach for fixing the Licence Fee for bubble structure. The ChPT has furnished a cost sheet in support of the rate of ₹ 172.57 per sq. m. per month worked out by it. The rate was objected to by the port users, as reported by the port.
- (iii). In view of the reluctance of the users, the port has decided to levy the rate applicable for allotment of 'Open sided shed' as per the existing Scale of Rates (Chapter-VI, Sl. No.5).
- (iv). The Board of Trustees of the port have approved the proposal of the port to classify the bubble structure as 'Open sided shed' as per item No.5 under Miscellaneous Charges of Chapter VI of Scale of Rates and to levy the rate without imposing penalty.

1.2. The proposal of the port is to include the new facility under the category of 'Open sided shed' and levy the applicable licence fee prescribed in the existing Scale of Rates by amending the relevant provision of the existing Scale of Rates as follows:

Chapter VI – Miscellaneous charges

Scale-1 (Licence fee for space allotted under monthly licence and under annual licence)

Item No.	Existing description	Proposed description
5.	Open sided shed	Open sided shed including Bubble Structure

2. In accordance with the consultative procedure prescribed, a copy of the proposal from the ChPT was forwarded to the concerned user organizations for their comments. The comments received from the user organisations were forwarded to the ChPT as feedback information. The ChPT has not responded to the comments of the user organisations.

3. Based on a preliminary scrutiny of the proposal, the ChPT was requested to furnish additional information / clarifications on various issues. The ChPT has responded. The queries raised and the response of ChPT are tabulated below:

Sl. No.	Queries raised by TAMP	Response of the ChPT
(i).	The proposal of ChPT is to levy the existing licence fee applicable for 'Open sided shed' to the newly	Bubble structure is the steel structure with a framework of iron pillars, closed at the top and sides open. During the discussion held on 27 July 2010, all the trustees opined that

	constructed 'bubble structure' also. The ChPT to justify that the bubble structure facility is comparable to 'open sided shed'.	the bubble structure appeared to be open sided shed and hence decided to levy the rate under Item no.5 Miscellaneous Charges of Chapter-VI of Scale of Rates "Open Sided Shed" for the bubble structure.																															
(ii).	The ChPT has stated that the bubble structure was constructed for storage of coal on transit basis to reduce the pollution level. The existing approved Scale of Rates of ChPT provides for recovery of a Pollution Levy of ₹ 3/- per MT on all dry bulk cargo creating pollution, including coal and coke, in addition to normal wharfage. The ChPT to clarify why the bubble structure constructed by the port cannot be considered as a facility offered against the existing pollution levy.	The pollution levy at ₹ 3/- per tonne is collected to meet the revenue expenditure. The levy is treated as income and shown in operating income even though a separate proforma account is made. The bubble structure has been constructed at a cost of ₹6.70 Crores and is separately capitalized in 2009-10.																															
(iii).	The additional revenue expected to be generated on account of the proposal of the port to include the bubble structure under the 'open sided shed' for each of the years covered under the current tariff cycle to be furnished.	The details of additional revenue furnished by the ChPT are tabulated below: <table><tr><th rowspan="2">Sl. No.</th><th rowspan="2">Year</th><th rowspan="2">Area of bubble structure in sq. m.</th><th colspan="3">Rate per sq. m. per month (₹)</th><th rowspan="2">Additional revenue per annum (₹)</th></tr><tr><th>Open sided shed</th><th>Open area</th><th>Difference</th></tr><tr><td>1.</td><td>2010-11</td><td>11829</td><td>65.21</td><td>23.90</td><td>41.31</td><td>5,863,872/-</td></tr><tr><td>2.</td><td>2011-12</td><td>11829</td><td>68.47</td><td>24.38</td><td>44.09</td><td>6,258,842/-</td></tr><tr><td>3.</td><td>2012-13</td><td>11829</td><td>71.89</td><td>24.87</td><td>47.03</td><td>6,675,597/-</td></tr></table>	Sl. No.	Year	Area of bubble structure in sq. m.	Rate per sq. m. per month (₹)			Additional revenue per annum (₹)	Open sided shed	Open area	Difference	1.	2010-11	11829	65.21	23.90	41.31	5,863,872/-	2.	2011-12	11829	68.47	24.38	44.09	6,258,842/-	3.	2012-13	11829	71.89	24.87	47.03	6,675,597/-
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3.	2012-13	11829	71.89	24.87	47.03	6,675,597/-																											
(iv).	During the last general revision of tariff at ChPT approved by this Authority vide Order dated 10 November 2010, additions to the gross block to the tune of ₹ 5298.50 lakhs was considered during the year 2010-11, which inter-alia includes ₹ 621 lakhs towards Buildings, Sheds and other structures. The ChPT to confirm that the capital expenditure incurred towards construction of bubble structure was not included in the above estimate. In case, it was included in the capital expenditure estimate already considered in the tariff Order dated 10 November 2010, the corresponding adjustment in the unit rate of some other relevant tariff item may be proposed to maintain revenue neutral position.	The capital expenditure has been considered as additions to the Gross Block during the year 2009-10 under semi-mechanized coal handling system for which a sum of ₹46.08 Crores was provided. No provision was made to the block during 2010-11 in the additions to the tune of ₹5298.50 lakhs. The differential income on account of open sided shed and open space has not been considered while submitting the proposal. However, due to non-handling of iron ore from July 2010 and reduction in coal during the year 2010-11, there was a drop in revenue to a large extent as is evident from the final accounts for the year 2010-11. The operating income has reduced from ₹718.35 Crores during the year 2009-10 to ₹683.91 Crores during 2010-11. Also the likely operating income for 2011-12 will be much less than the projection of ₹845.58 crores projected in Form 2B while submitting the proposal in June 2010 for general revision of Scale of Rates. Due to non-handling of ore and coal as per the Court order, the port will not be in a position to earn the projected income for the next two years as well as proposed for general revision. Hence the above differential income (as specified the point (iii) above) may be treated as negligible income for corresponding adjustment.																															
(v).	(a). The Chennai Port Stevedoring Association in its letter dated 30 September 2011, (a copy of which was forwarded to the ChPT vide our letter of even number dated 11 October 2011) while offering comments on the	The Bubble Structure was designed as per the suggestion of Tamil Nadu Pollution Control Board as pollution control measures and is one of the initiatives taken by ChPT to reduce the coal dust pollution, generated by handling coal and stacking in the yard. The purpose of the bubble structure was to reduce the coal dust pollution to a greater extent by storing the cargo inside the bubble structure.																															

	subject proposal of ChPT has stated that their members felt that the proposed structure by Chennai Port would pave way for the benefit of certain restricted allottees. The ChPT to furnish its comments in this regard. (b). The ChPT to confirm that the 'bubble structure facility' will be offered as a common user facility available to all users of the port.	Accordingly, the port users were informed to use the bubble structure for this purpose. Some of the users did not come forward to take the bubble structure for storing the coal. However, one of the port users came forward and accordingly allotment was given to the party. The bubble structure was classified as Open sided shed since there was no specific classification is available in the present Scale of Rates as bubble structure. The Chennai Stevedores Association is aware of all these facts and they did not make any suggestion so far. The suggestion of stevedores that the bubble structure shall be made available as a transit area for the common use by all the users, can be considered only when the existing transit sheds and area are fully utilized and if there is any requirement for extra transit area. However, since the Hon'ble High Court of Madras has imposed ban on handling coal and iron ore from 1.10.2011, the port will take a decision to allot bubble structure. The port may allot the bubble structure on monthly licence basis normally and if there is demand from more users, the allotment can be made on Tender basis. With reference to the suggestion of Stevedores Association to cancel the present allotment and go in for fresh allotment, it can be done after vacating the cargo by the existing allottee.
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4.1 A joint hearing in this case was held on 29 November 2011 at Chennai. The ChPT made a presentation of its proposal. At the joint hearing, ChPT and users have made their submissions.

4.2. While reiterating the points made in its proposal, the ChPT made the following additional submissions in its presentation made at the joint hearing:

- (i). The bubble structure is capable of stacking one entire ship load of coal about 30,000 MT inside.
- (ii). Bubble structure has been allotted to M/s.SICAL Logistics Ltd. from August 2010 at the rate of ₹652/- per 10 sq. m.
- (iii). The rate for bubble structure as per SOR is ₹685/- per 10 sq. m. as on date.

5. 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 the arguments made by the concerned parties will be sent separately to the relevant parties. These details will also be made available at our website <http://tariffauthority.gov.in>

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

- (i). The ChPT has reportedly constructed a Bubble structure measuring 11829 sq. m. at a cost of around ₹6.70 crores reportedly as per the suggestion of Tamil Nadu Pollution Control Board to reduce the coal dust pollution. The existing Scale of Rates of ChPT does not prescribe any separate tariff for the use of bubble structure. Clause 2.17.1 of the tariff guidelines of 2005 provides that whenever a specific tariff for a service / cargo is not available in the notified Scale of Rates, the port operator can submit a suitable proposal.

- (ii). The ChPT has subsequently reported that coal and iron ore handling at the port has been stopped with effect from 1 October 2011, as per Court directions. Therefore, the bubble structure is proposed to be used for storage of other compatible cargo.
- (iii). The ChPT had calculated a rate of ₹172.57 per sq. m. per month for allotment of bubble structure following the cost plus return on capital employed approach. However, it has proposed to classify the bubble structure as 'open sided shed' and to apply the existing licence fee applicable for 'open sided shed' to the bubble structure. In the present tariff arrangement, the 'open sided shed' falls under the tariff category of 'Scale of Licence Fee' for allotment of space at the ChPT. The revision of Scale of Licence Fee for allotment of space at ChPT is long overdue and remains yet to be revised for want of proposal from the ChPT for revision of its estate related charges following extant Land Policy Guidelines issued by the Government. It may not, therefore, be appropriate to rely solely on the existing licence fee structure and allow the same to a new facility. Further, the tariff guidelines require application of cost plus method to set tariff and provide flexibility to a Port Trust to operate within the ceiling rates prescribed. Therefore, the case is analysed further to set cost plus tariff.
- (iv). The ChPT has reported the capital cost of the bubble structure at ₹681.63 lakhs which is relied upon.
- (v).
 - (a). The repairs & maintenance cost at 1% of the capital cost of bubble structure per annum as estimated by the ChPT is taken into account in the absence of actuals available.
 - (b). As far as the estimate of insurance cost at 1% of the capital cost of the bubble structure per annum is concerned, the ChPT has not furnished any documentary evidence to support the estimated insurance cost. Besides, the port had never intimated in any of the earlier proceedings that its warehouses, sheds, etc. are insured. Hence, the insurance cost is not considered.
 - (c). The ChPT has computed depreciation @ 3.34% p.a. for bubble structure, which is seen to be the rate applicable for civil structure under the provisions of the Companies Act, 1956. The estimated depreciation is considered.
 - (d). The ChPT has considered the licence fee for the area of 11829 sq. m. covered by the bubble structure at the rate prescribed for open space in the existing Scale of Rates, updated with the escalation factor applicable for the relevant period. Since the rate of ₹22.08 per sq. m. per month considered by the ChPT is relevant for the year 2010-11, it is updated by applying 2% escalation to arrive at the rate for the year 2011-12.
 - (e). The ChPT has considered other expenses at 10% of the capital cost of the bubble structure per annum. The overheads for the port as a whole were already considered at the time of review of the Scale of Rates during last general revision of tariff of ChPT undertaken in November 2010 covering the year 2009-10 during which the ChPT has commissioned the bubble structure. The Port has not reported any incremental overheads associated with the bubble structure. In the absence of such actuals, overheads are moderated and is considered at 5% of the capital cost of the bubble structure on ad hoc basis.
- (vi). This Authority has adopted the ROCE at 16% for the tariff cases to be decided during the year 2011-12. The ChPT has also considered 16% ROCE on the capital cost of the bubble structure. The estimated ROCE is modified and the

ROCE is allowed on the average of the WDV of bubble structure for the three years period.

- (vii). The total annual revenue requirement for use of the 'bubble structure' at ChPT works out to ₹197.41 lakhs per annum, which is an aggregate of 16% ROCE (₹101.77 lakhs) and estimated operating cost (₹95.64 lakhs). Thus, the rate for the use of bubble structure works out to ₹4.57 per sq. m. per day. The cost statement for fixing the rate for bubble structure submitted by the ChPT is modified in line with the above analysis. The modified statement is attached as **Annex-I**.
- (viii). As stated earlier, the ChPT is yet to file its proposal for revision of its Scale of Licence fee, despite a specific advice rendered by this Authority. The fixation of rate for use of bubble structure at ChPT considers the existing rate of licence fee applicable for open space duly updated with applicable escalation factor, as an element of cost, as explained in the earlier paragraph. The rate of licence fee for open space may undergo upward revision in the proposal to be filed by the ChPT for revision of its Scale of Licence Fee. This will have an impact on the rate fixed now for the use of bubble structure. Therefore, the ChPT is advised to bear in mind to review the rate for use of bubble structure while the port files its proposal for revision of its Scale of Licence Fee.
- (ix). The ChPT has estimated additional revenue on account of bubble structure to the tune of ₹187.98 lakhs for the entire current tariff cycle, at the rate proposed by it. At the rate approved by this Authority, the additional revenue that may accrue to the ChPT during the current tariff cycle works out to ₹308.27 lakhs.

The ChPT has reported in the present proposal that the capital expenditure incurred for construction of bubble structure was capitalized by the port during the year 2009-10. During the last general revision of Scale of Rates at ChPT vide tariff Order No.TAMP/45/2008-CHPT dated 10 November 2010, the actual financial / cost position upto the year 2009-10 and estimated financial / cost position for the years 2010-11 to 2012-13 were considered. That being so, adjustment in the rate for some other relevant tariff item is necessary to maintain revenue neutral position. However, recognising the position reported by the ChPT that it has not achieved the targeted revenue for the year 2010-11 as well as it may not achieve the targeted revenue for the remaining period of the current tariff cycle upto 2012-13, the additional revenue that may accrue to the port on account of the use of the bubble structure may not result in undue advantage to the port. The additional revenue will be considered on actual basis while analyzing the actual physical and financial performance of the port for the years 2010-11 to 2012-13 during the next general revision of its Scale of Rates. In view of this position, adjustment in some other relevant tariff item is not considered.

- (x). As per clauses 2.17.1 and 2.17.2 of the tariff guidelines of 2005, whenever a specific tariff for a service / cargo is not available in the notified Scale of Rates, the port can submit a suitable proposal. Simultaneously with the submission of proposal, the proposed rate can be levied on an ad hoc basis till the rate is finally notified. However, the adhoc rate must be derived based on the existing notified tariffs for comparable services and it must be mutually agreed upon by the port and the concerned users. During the proceedings of this case, it has come to light that the port has already implemented the rate prescribed for 'open sided shed' for allotment of bubble structure without following the due procedure prescribed in the Tariff guidelines of 2005. Since the port has not gained any undue advantage because of the implementation of the rate in the backdrop of shortfall in the estimated revenue for the year 2010-11, this Authority is inclined to take a lenient view. However, the ChPT is advised to refrain from such practice in future.
- (xi). The ChPT has made a mention in its proposal to levy the rate applicable for 'open sided shed' to 'bubble structure' without imposing penalty. The reason for such a

mention remains unexplained. The ChPT has also not proposed any condition in this regard. In any event, the existing conditions subject to the general conditionality prescribed in the Scale of Rates of all the Major Port Trusts (except Mumbai Port Trust) vide Order dated 26 July 2011, after announcement of the 'Land Policy for Major Ports 2010', shall apply to the allotment of bubble structure also.

- (xii). The CPSA has made a request to this Authority to direct the ChPT to cancel the present allotment of bubble structure and to go in for fresh allotment beneficial to all the users. The mandate given to this Authority is to fix Scale of Rates and prescribe conditionalities to govern the application of the Scale of Rates which will have common application to all the users of the port. The individual cases of allotment of space to the parties do not come under the regulatory purview of the Authority. Therefore, it is not for this Authority to give any direction to the ChPT in this regard. In any case, the ChPT has undertaken to offer the bubble structure as a common user facility.
- (xiii). The rate of ₹4.57 per sq. m. per day for use of bubble structure is approved. Since the bubble structure is already commissioned and put to use, the rate approved will come into effect from the date of notification of the Order passed in this case, in the Gazette of India.
- (xiv). With regard to the concern of the ChPT about the objection from the users to the initial rate of ₹172.57 per sq. m. per month worked out by ChPT on cost plus approach, it is relevant here to mention that as per Section 1.2 (xiii) of the existing Scale of Rates of ChPT, the rates prescribed in its Scale of Rates are ceiling levels and the ChPT is at liberty to charge lower rates based on commercial considerations.

7. In the result, and for the reasons given above, and based on a collective application of mind, the ChPT is directed to insert the following entry after the existing entry of Item No.8 in Scale-1 (Scale of Licence Fee for space allotted under monthly licence and under annual licence) of Chapter VI (Miscellaneous Charges) of the existing Scale of Rates of ChPT:

Item No.	Description of space	Unit	Licence Fee
9.	Bubble structure	Per sq. m. per day or part thereof	₹4.57

(Rani Jadhav)
Chairperson

COST STATEMENT FOR FIXATION OF LICENCE FEE FOR ALLOTMENT OF BUBBLE STRUCTURE

(₹ in lakhs)

Sr. No.	Particulars	Estimates furnished by ChPT		Estimates moderated by TAMP	
		Workings	Amount	Workings	Amount
I	Capital cost of bubble structure		681.63	As furnished by ChPT	681.63
II	Operating & Maintenance cost				
(a).	Repairs & Maintenance	@ 1% of capital cost per annum	6.82	@ 1% of capital cost per annum	6.82
(b).	Insurance	@ 1% of capital cost per annum	6.82	--	0.00
(c).	Depreciation	@ 3.34% per annum	22.77	@ 3.34% per annum	22.77
(d).	Licence Fee for the area	11829 sq. m. x Rs.22.08 per sq. m. per month x 12 mths	31.34	11829 sq. m. x Rs.22.52 per sq. m. per month x 12 months	31.97
(e).	Other expenses	@ 10% of capital cost per annum	68.16	@ 5% of capital cost per annum	34.08
	Total (a) to (e)		135.90		95.64
III	Return on capital employed	@ 16% on the total capital cost	109.06	@16% on the average WDV for the first 3 years (Refer Note below)	101.77
IV	Total Revenue Requirement (Operating cost plus Return on	(II) + (III)	244.96	(II) + (III)	197.41
V	Area of bubble structure	Sq. m.	11829	Sq. m.	11829
VI	Licence Fee ₹ per Sq. m. per month	IV / V / 12 x 100000	172.57	IV / V / 12 x 100000	139.07
VI	Licence Fee ₹ per Sq. m. per day	--	--	IV / V / 365 x 100000	4.57

Note Average capital employed
Capital cost at the beginning
Less: Depreciation
WDV at the year end
Average WDV for three years

681.63	658.86	636.09
22.77	22.77	22.77
658.86	636.09	613.32
636.09		

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

TAMP/43/2011-CHPT	:	Proposal of Chennai Port Trust for fixation of licence fee for allotment of Bubble Structure.
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In accordance with the consultative procedure prescribed, a copy of the proposal from the ChPT was forwarded to the concerned user organizations for their comments. The comments received from the user organisations were forwarded to the CHPT as feedback information. The ChPT has not responded to the comments of the user organisations. The comments received from the user organisations are summarised below:

Chennai Port Stevedores Association (CPSA)

- (i). The proposed structure by ChPT would pave way for the benefit of a certain allottees and, therefore, CPSA wanted the bubble structure be made available as transit area for common use by all the users.
- (ii). Suitable order may be passed to cancel the present allotment and go in for fresh allotment beneficial to all the users.

Hindustan Chamber of Commerce (HCC)

The HCC has supported the proposal of ChPT for allotment of Bubble Structure.

M/s.e2e Supply Chain Solutions Limited (e2eSCSL)

The e2eSCSL has accepted the revised rates proposed by the CHPT.

M/s.Madras Aluminium Company Limited (MACL)

Coal unloading / handling / storage is not allowed at Chennai Port hereafter and the bubble structure is meant for import items other than coal. Therefore, bubble structure may not serve its purpose of importing coal. Hence, it is not in a position to utilize the facility currently.

2. A joint hearing in this case was held on 29 November 2011 at Chennai. The ChPT made a presentation of its proposal. At the joint hearing, ChPT and users have made the following submissions:

Chennai Port Trust (ChPT)

- (i). As per cost calculations, the rate works out to ₹172.57 per sq. m. Based on the request of Trade, our Board has agreed to consider the rate for Bubble structure at par with open sided shed.

- (ii). Since the existing rates are applied, we have already introduced the rate on adhoc basis.
- (iii). Bubble structure will be offered on common user facility and for storage of any compatible cargo.
- (iv). We have already decided to allot the structure by auction based on highest throughput offer.

Chennai Port Stevedores Association (CPSA)

- (i). Our request is to allow other cargo to use the structure, when coal is not using it. We have noted now that the Port is willing to consider this option.
- (ii). The bubble structure poses lot of restriction in coal handling. We request TAMP to reduce the rate to promote trade and utilisation of the facility.

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