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Tariff Authority for Major Ports

G.No. 563 **New Delhi,** **23 December 2020**

NOTIFICATION

In exercise of the powers conferred under Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from Chennai Container Terminal Private Limited (CCTPL) for general revision of its Scale of Rates (SOR) under Tariff Guidelines, 2019. Considering the time involved for notifying the (Speaking) Order along with the revised Scale of Rates approved by this Authority, this Authority decided to notify only the revised Scale of Rates immediately. Accordingly, the Scale of Rates approved by this Authority on 28 October 2020 was notified in the Gazette of India on 04 December 2020 vide Gazette No. 537. It was stated in the said Notification that this Authority will notify the Speaking Order, in due course of time. Accordingly, this Authority hereby notifies the Speaking Order disposing of the proposal of the CCTPL for general revision of its Scale of Rates as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/25/2020-CCTPL

Chennai Container Terminal Private Limited … **Applicant**

QUORUM

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

O R D E R

(Passed on this 28th day of October 2020)

This case relates to the proposal received from Chennai Container Terminal Private Limited (CCTPL), a BOT Operator at Chennai Port Trust (CHPT), vide its e-mail dated 23 July 2020 for General Revision of its Scale of Rates under Tariff Guidelines, 2019.

2.1. This Authority vide its Order No.TAMP/55/2009-CCTL dated 25 March 2011 had revised the SOR of the CCTPL based on the proposal filed by CCTPL following 2005 Tariff Guidelines. The said Order was notified in the Gazette of India on 5 May 2011 vide Gazette No.95. The revised Scale of Rates and conditionalities of the CCTPL had to come into effect after expiry of 15 days from the date of notification of the said Order in the Gazette of India and was to be in force till 31 March 2013. In the said order, this Authority had effected an across the board reduction of 35% over the then prevailing tariff of CCTPL (i.e. tariff approved vide Order No. TAMP/21/2006-CCTPL dated 28 March 2007 read with Review Order No. TAMP/45/2007-CCTPL dated 19 June 2008.)

2.2 Aggrieved by the said Tariff Order dated 25 March 2011, the CCTPL approached the Hon'ble High Court of Madras challenging the tariff order dated 25 March 2011 by its Writ Petition No. 12456 and 12457 of 2011. The Hon'ble High Court of Madras vide its Order dated 19 May 2011 has stayed the operation of the tariff Order dated 25 March 2011 and has allowed the CCTPL to levy the tariff as approved in the tariff Order dated 19 June 2008. The stay Order of the High Court is still in force and the CCTPL continues to levy the tariff as approved vide tariff Order dated 28 March 2007 read with Order dated 19 June 2008.

3. The Ministry of Shipping (MOS), in exercise of powers conferred on it by Section 111 of the Major Port Trusts Act, 1963, has vide its letter No. PR14019/20/2009-PG(Pt-IV) dated 5 March 2019 issued Tariff Guidelines, 2019, for BOT operators who were previously governed by 2005 Tariff Guidelines. The Tariff Guidelines, 2019, has been notified in the Gazette of India on 7 March 2019 vide Gazette No.92. Thereafter, as per Clause 1.7 of the Tariff Guidelines, Working Guidelines to operationalize the Tariff Guidelines, 2019, has been notified in the Gazette of India on 11 July 2019, vide Gazette No.244.

4.1. In this backdrop, the CCTPL has filed its proposal dated 23 July 2020 for general revision of its SOR, following Tariff Guidelines, 2019. The submissions made by CCTPL are as follows:

(i). The Ministry of Shipping (MOS) vide letter No. PR14019/20/2009-PG(Pt-IV) dated 5 March 2019 issued Tariff Guidelines, 2019, for regulation of tariff of BOT Operators operating in Major Ports under the erstwhile Tariff Guidelines. Subsequently, Tariff guidelines 2019 have been notified by TAMP vide Gazette No.92 and Notification No TAMP/61/2018-Misc. dated 08 March 2019.

(ii) The CCTPL has carefully gone through the Tariff Guidelines, 2019 and have prepared the proposal for fixation of tariff in accordance with said guidelines, in the formats and along with supporting documents as prescribed by TAMP in the Working Guidelines.

(iii) The CCTPL intends to take steps to intimate the Madras High Court in Writ Petitions No. 12456 and 12457 of 2011 & Writ Petitions No.22196 and 22197 of 2011 with respect to the same.

(iv). The proposal is without prejudice to its rights and contentions included in Writ Petition No.12456 and 12457 of 2011 & Writ Petitions No 22196 and 22197 of 2011 and nothing contained herein shall be deemed to be a waiver of the same.

4.2. The highlights of the proposal as furnished by the CCTPL are given below:

(i). Annual Revenue requirement (ARR) has been computed in accordance with Clause 2.1 of the Tariff guidelines, 2019 at INR 28,191 lakh as on 31 March 2019.

(ii). Since bidding process of CCT was finalized before 29 July 2003, the tariff computation will take into account royalty/ revenue share as cost subject to maximum of the amount quoted by the next highest bidding for tariff fixation, i.e. 27%.

(iii). CCT Financial Statement are IND AS compliant; there are no differences between the financials as per IGAAP and IND AS.

(iv). The ARR so computed has been indexed by 4.26% as per escalation factor announced by TAMP for FY 2019-2020. This has been further indexed by 1.13% namely 60% of WPI announced at 1.88% as applicable for 2021-22. Indexed ARR thus computed is at INR 29,724 lakhs.

(v). Normal handling, storage and ancillary charges are proposed at lesser ARR at ₹.22,240 lakhs. As TAMP is aware, CCTPL have challenged the TAMP Order dated 25 March 2011 vide writ Petitions No.12456 and 12457 of 2011 & Writ Petition No.22196 and 22197 of 2011 and the Order has been stayed by the Madras High Court. Clause 3.1.1 of the Tariff Guidelines, 2019 provides that, " The Scale of Rates of some of the BOT operators have not been reviewed due to litigations pending in the High Court on the Tariff Orders passed by TAMP. The surplus/deficit over and above the admissible cost and permissible returns, if any, arising during the period of litigation will be subject to the orders of the respective Courts. Alternatively, MOS concerned Major Port Trusts, concerned BOT operators and TAMP may decide on the treatment of the past period surplus arising during the period of litigation.''

While the CCTPL do not admit to any past surplus, depending on the mutual decision pursuant to discussions in keeping with the clause above, the ARR foregone by us should be adjusted against any past surplus, if so determined. In the current application, CCTPL has foregone an amount of ₹ 7,484 lakh per annum aggregating to ₹.22,452 lakhs for a period of three years, without prejudice to its rights.

(vi). The tariff proposed in the attached SOR will be indexed by 60% Wholesale Price Index as announced by the Government of India. Such revisions will be first made on 1st May 2021 and subsequently on 1st May of respective year.

(vii) In order to incentive more long – haul vessels to call CCTPL terminal and thereby increase Origin/ Destination volumes, CCTPL proposes a new category of rates for FCL (laden) containers loaded/ discharged on Long Haul vessel. Vessels originating/ destined from/ to any ports in containers of America/ Europe/ Africa or beyond Singapore/ Malaysia would be classified as Long-Haul Vessel.

(viii). Tariff for hazardous and Over Dimensions cargo has been proposed at a premium of 37.50% on Handling and Storage Charges in accordance with clause 9.9.3.

(ix). Tariff for supply of Electricity to reefer container has been proposed at 10.113% increase over the present SOR due to increase electricity rates payable since 2008.

(x). In order to facilitate and encourage coastal trade, the free days for storage of Coastal containers have been increased to 10 days for both Export and Import Coastal containers. Presently Export Coastal containers have 7 days free period and Import coastal containers have 3 days free period.

(xi). Free days for DPD containers have been increased to 5 days from the present 3 days.

(xii). For coastal Transshipment containers, minor increase in tariff has been proposed.

(xiii). Transshipment containers are generally not stored in the intermediate terminals, as speed of onward movement is essential. Accordingly free days for all Transshipment containers have been revised from the present 30 days to 10 days. This will also ensure efficiency of movement by shipping lines and avoid congestion at terminal yard.

(xiv). Under Miscellaneous charges, Movement to another terminal in port, charges for use of slings, cleaning of containers, container turning have been proposed. These charges are applicable only if the terminal users request/utilize for these services. Revenues from these services have been estimated at ₹ 38 Lakh and included in Other Revenue.

(xv). Certain tariff at the Container Freight Station (CFS) have been revised upward due to the increase in the operating costs; these increases are specified in the From 5 of the application. CFS revenues are less than 2% of the total revenue.

(xvi). Exchange Rate used for calculating US Dollar denominated revenue is ₹75.35/USD.

4.3. The CCTPL has furnished detailed computation of Annual Revenue Requirement (ARR) under Form-1 and Revenue estimation at the proposed rate in Form-4. A summary position of ARR computation furnished by CCTPL is tabulated below:

(₹.in lakhs)

Sl. No.	Description	Y1 2016-17	Y2 2017-18	Y3 2018-19
(1).	**Total Expenditure (As per Audited Annual Accounts)**			
(i).	Operating expenses (including depreciation)	22,152	19,445	20,175
(ii).	Finance and Miscellaneous expenses (FME)	78	967	87
	Total Expenditure 1=(i)+(ii)	22,230	20,412	20,262
(2).	**Adjustments in respect of items where there is variation in figures reported as per INDAS (as per Audited Accounts) and IGAAP**			
(i).	Depreciation	-	-	-
(ii).	Other expenditure items, if any, to be listed	-	-	-
	Total of Adjustments 2=(i)+(ii)+ -----	**-**	**-**	**-**
(3).	**Less: Adjustments:**			
(i).	Actual Royalty / Revenue share paid to the port	(8,279)	(8,060)	(8,423)
(ii).	Interest on delayed payment of taxes	(16)	(949.5)	(67)
(iii).	Interest on overdraft/term loan	(24)	(0.8)	(4)
(iv).	Provision for bad and doubtful debts	-	(6)	(62)
(v).	Provision for slow moving inventory	(22)		-
	Total of 3 =[3(i)+3(ii)+3(iii)+3(iv)+3(v)+3(vi)]	(8,342)	(9,016)	(8,556)
(4).	**Add: Admissible Royalty/ Revenue Share as per Clause 2.2. of the Tariff Guidelines, 2019**	6,021	5,861	6,126
(5).	**Total Expenditure after Total Adjustments (5 = 1+2-3)**	19,909	17,257	17,832
(6).	Average Expenses of SI. No.5 = [Y1 + Y2 + Y3] / 3	18,332		

Sl. No.	Description	Y1 2016-17	Y2 2017-18	Y3 2018-19
(7).	**Capital Employed**			
	(i). Gross Fixed Assets (Property, Plant & Equipment) as on 31st March 2019 (As per IGAAP)	59,468		
	(ii). Add: Capital Work in Progress as on 31st March 2019 (As per Audited Annual Accounts)	-		
	(iii). Add: Working Capital as per norms prescribed in clause 2.6 of the Tariff Guidelines, 2019	2,030		
	(a). Inventory	197		
	(b). Sundry Debtors	530		
	(c). Cash	1,304		
	(d). Sum of (a)+(b)+(c)	2,030		
	(iv). Total Capital Employed [(i)+(ii)+(iii)]	**61,498**		
(8).	**Return on Capital Employed 16% on Sl. No.7(iv)**	9,840		
(9).	**Annual Revenue Requirement (ARR) as on 31 March 2019 [(6)+ (8)**	28,172		
(10).	**Indexation in the ARR @ 100% of the WPI applicable for the year 2019-20 ie 4.26%)**	**29,372**		
(10 a)	**Indexation in the ARR as per (10) @ 1.13% applicable for the year 2020-21**	**29,704**		
(11).	**Ceiling Indexed Annual Revenue Requirement (ARR) as given in Sr. No.10 above.**	**29,704**		
(11 a)	**Voluntary Adjustment of Past Surplus - We draw your attention to Clause No 5 in Annexure 1 "Highlights of the Proposal". In this regards, while we do not admit to any past surplus, should any such surplus arise either out of mutual discussions or by a decision of the Madras High Court, the amount of ARR foregone by us amounting to Rs. 22,257 Lakh (Rs. 7,419 lakh X 3) should be adjusted against the same."**	**7,419**		
(12).	**Revenue Estimation at the Proposed indexed SOR within the Ceiling indexed ARR estimated at Sl. No.11 above**	22,285		

4.4. The CCTPL has furnished in Form 4, the working of revenue estimation at the existing level of tariff as well as the proposed level of tariff for the average of the actual traffic handled by the BOT operator during the years Y1, Y2 and Y3. As per the said form, the total revenue estimated at the proposed level of tariff is ₹.22,285 lakhs. The CCTPL is seen to have generally sought an increase of 13% over the existing Tariff, except in case of ICD loaded containers, Long Haul and Reefer Containers. The CCTPL has reported that a reduction of 3.60% has been proposed in case of ICD loaded containers and Long Haul containers and an increase of 11.13% is proposed in case of Reefer containers.

4.5. The CCTPL has furnished a copy each of the Audited Annual Accounts for the years 2016-17, 2017-18 and 2018-19.

4.6. The tariff proposal of CCTPL is as follows:

(a). Tariff

Sl. No.	Description	Unit of levy	Existing tariff	Proposed Tariff	% increase over the existing tariff
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6) = (4-3)/3**
A	**Foreign containers**				
1.1	**Loaded Containers - Long Haul**				

	(a) 20 ft containers	Per Container	3,854	3,703	-3.93%
	(b) 20-40 ft containers	Per Container	5,780	5,553	-3.93%
	(c) Above 40 ft containers	Per Container	7,707	7,404	-3.93%
1.2	**Loaded Containers – Other**				
	(a) 20 ft containers	Per Container	3,854	3,898	1.13%
	(b) 20-40 ft containers	Per Container	5,780	5,846	1.13%
	(c) Above 40 ft containers	Per Container	7,707	7,794	1.13%
2.1	**Empty Containers - Long Haul**				
	(a) 20 ft containers	Per Container	2,464	2,492	1.13%
	(b) 20-40 ft containers	Per Container	3,695	3,737	1.13%
	(c) Above 40 ft containers	Per Container	4,927	4,982	1.13%
2.2	**Empty Containers - Other**				
	(a) 20 ft containers	Per Container	2,464	2,492	1.13%
	(b) 20-40 ft containers	Per Container	3,695	3,737	1.13%
	(c) Above 40 ft containers	Per Container	4,927	4,982	1.13%
3.1	**Reefer Containers - Long Haul**				
	(a) 20 ft containers	Per Container	3,854	3,703	-3.93%
	(b) 20-40 ft containers	Per Container	5,780	5,553	-3.93%
	(c) Above 40 ft containers	Per Container	7,707	7,404	-3.93%
3.2	**Reefer Containers - Other**				
	(a) 20 ft containers	Per Container	3,854	3,898	1.13%
	(b) 20-40 ft containers	Per Container	5,780	5,846	1.13%
	(c) Above 40 ft containers	Per Container	7,707	7,794	1.13%
4.1	**ODC/HAZ Containers - Long Haul**				
	(a) 20 ft containers	Per Container	4,616	4,801	4.01%
	(b) 20-40 ft containers	Per Container	6,923	7,201	4.00%
	(c) Above 40 ft containers	Per Container	9,231	9,601	4.01%
4.2	**ODC/HAZ Containers - Other**				
	(a) 20 ft containers	Per Container	4,616	5,054	9.48%
	(b) 20-40 ft containers	Per Container	6,923	7,580	9.48%
	(c) Above 40 ft containers	Per Container	9,231	10,106	9.48%
B.	**Foreign Transhipment containers**				
1.1	**Loaded Containers - Long Haul**				
	(a) 20 ft containers	Per Container	3,646	3,687	1.13%
	(b) 20-40 ft containers	Per Container	5,471	5,532	1.13%
	(c) Above 40 ft containers	Per Container	7,291	7,374	1.13%
1.2	**Loaded Containers – Other**				
	(a) 20 ft containers	Per Container	3,646	3,687	1.13%
	(b) 20-40 ft containers	Per Container	5,471	5,532	1.13%
	(c) Above 40 ft containers	Per Container	7,291	7,374	1.13%
2.1	**Empty Containers - Long Haul**				
	(a) 20 ft containers	Per Container	2,230	2,256	1.13%
	(b) 20-40 ft containers	Per Container	3,347	3,385	1.13%
	(c) Above 40 ft containers	Per Container	4,460	4,510	1.13%
2.2	**Empty Containers - Others**				
	(a) 20 ft containers	Per Container	2,230	2,256	1.13%
	(b) 20-40 ft containers	Per Container	3,347	3,385	1.13%
	(c) Above 40 ft containers	Per Container	4,460	4,510	1.13%

C.	**Others (Restow - Foreign)**				
1.1	**Loaded Containers- Long Haul**				
	(a) 20 ft containers	Per Container	2,425	2,452	1.13%
	(b) 20-40 ft containers	Per Container	3,637	3,678	1.13%
	(c) Above 40 ft containers	Per Container	4,849	4,904	1.13%
1.2	**Loaded Containers - Others**				
	(a) 20 ft containers	Per Container	2,425	2,452	1.13%
	(b) 20-40 ft containers	Per Container	3,637	3,678	1.13%
	(c) Above 40 ft containers	Per Container	4,849	4,904	1.13%
D	**Coastal Containers**				
1.	**Loaded Containers**				
	(a) 20 ft containers	Per Container	1,836	1,857	1.13%
	(b) 20-40 ft containers	Per Container	2,753	2,785	1.13%
	(c) Above 40 ft containers	Per Container	3,671	3,713	1.13%
22	**Empty Containers**				
	(a) 20 ft containers	Per Container	1,002	1,013	1.13%
	(b) 20-40 ft containers	Per Container	1,502	1,519	1.13%
	(c) Above 40 ft containers	Per Container	2,003	2,026	1.13%
3.	**Reefer Containers**				
	(a) 20 ft containers	Per Container	1,836	1,857	1.13%
	(b) 20-40 ft containers	Per Container	2,753	2,785	1.13%
	(c) Above 40 ft containers	Per Container	3,671	3,713	1.13%
4.	**ODC/HAZ Containers**				
	(a) 20 ft containers	Per Container	2,180	2,379	9.12%
	(b) 20-40 ft containers	Per Container	3,270	3,569	9.12%
	(c) Above 40 ft containers	Per Container	4,360	4,758	9.12%
E	**Coastal Transhipment Containers**				
1.	**Loaded Containers**				
	(a) 20 ft containers	Per Container	1,595	1,613	1.13%
	(b) 20-40 ft containers	Per Container	2,394	2,421	1.13%
	(c) Above 40 ft containers	Per Container	3,190	3,226	1.13%
2.	**Empty Containers**				
	(a) 20 ft containers	Per Container	746	754	1.13%
	(b) 20-40 ft containers	Per Container	1,119	1,132	1.13%
	(c) Above 40 ft containers	Per Container	1,492	1,508	1.13%
F	**Others (Restow - Coastal)**				
1	**Loaded Containers**				
	(a) 20 ft containers	Per Container	811	820	1.13%
	(b) 20-40 ft containers	Per Container	1,216	1,230	1.13%
	(c) Above 40 ft containers	Per Container	1,622	1,640	1.13%
G	*** Hatch Cover (Ref Note 1)**				
	Foreign Vessel	Per Hatch cover	3,395	3,433	1.13%
	Coastal	Per Hatch cover	1,135	1,148	1.13%
H	**ICD Containers**				
1.1	**Loaded Containers- Long Haul**				

	(a) 20 ft containers	Per Container	4,787	4,615	-3.60%
	(b) 20-40 ft containers	Per Container	7,180	6,921	-3.60%
	(c) Above 40 ft containers	Per Container	9,573	9,228	-3.60%
1.2	**Loaded Containers – Others**				
	(a) 20 ft containers	Per Container	4,787	4,841	1.13%
	(b) 20-40 ft containers	Per Container	7,180	7,261	1.13%
	(c) Above 40 ft containers	Per Container	9,573	9,681	1.13%
2.1	**Empty Containers - Long Haul**				
	(a) 20 ft containers	Per Container	3,413	3,452	1.13%
	(b) 20-40 ft containers	Per Container	5,119	5,177	1.13%
	(c) Above 40 ft containers	Per Container	6,825	6,902	1.13%
2.2	**Empty Containers - Others**				
	(a) 20 ft containers	Per Container	3,413	3,452	1.13%
	(b) 20-40 ft containers	Per Container	5,119	5,177	1.13%
	(c) Above 40 ft containers	Per Container	6,825	6,902	1.13%
I	**Mandatory User Charges**	Per Container	155	157	1.13%
J	*** Storage (Ref Note 2)**				
	Full (Foreign)	Per TEU	103.43	104.59	1.13%
	Empty (Foreign)	Per TEU	18	19	1.13%
	Full (Coastal)	Per TEU	98	99	1.13%
	Empty (Coastal)	Per TEU	31	31	1.13%
K	**Reefer Revenue - Supply of Electricity (Ref Note 3)**	Per TEU	4,251	4,724	11.13%
L	*** Other revenue (Ref Note 4 & 5)**	Per TEU	221	224	1.13%
M	**CFS Revenue**	Per CFS TEU	15,001	20,806	

CCTPL Notes

1. Hatch cover has been bifurcated into foreign and coastal based on previous year's actual
2. Storage rates is based on previous year’s (2018-19) actual per TEU actuals
3. Reefer rates computed based on previous year’s (2018-19) revenue per reefer TEU actuals
4. Reefer and other rates are computed based on previous year's (2018-19) per TEU actuals
5. Other revenue comprise of Pre-tip inspection, Shutout/re-nomination, Special service requests and CFS charges

5.1. In accordance with the consultative procedure prescribed, a copy of the CCTPL proposal dated 23 July 2020 was forwarded to the Licensor port, Chennai Port Trust (CHPT) and the concerned users/ user organizations vide our e-mails dated 07 August 2020 seeking their comments. Based on the request made by CCTPL, regarding non-circulation of some of the documents to the users, on the ground of they being sensitive, only Form1, 2, 3, 4, 6A, 6B and the proposed Scale of Rates were circulated to the users. The entire proposal (except audited Annual Accounts) was, however, forwarded to the Licensor Port CHPT, for its comments.

5.2. In response to our letter dated 07 August 2020, only one user i.e. Container Shipping Lines Association (CSLA) has furnished its comments vide its email dated 13 August 2020 till the case was finalized. The comments of CSLA was forwarded to CCTPL for its feedback comments. The CCTPL vide its email dated 16 October 2020 has furnished its comments.

6.1. As brought out at preceding para no. 2.1, 2.2 and 2.3 above, the Hon'ble High Court of Madras has stayed the last tariff Order passed by this Authority in the year 2011 and has permitted CCTPL to levy the then prevailing tariff, which is as per the order dated 19 June 2008 passed by this Authority. The said Court Order is still in force.

6.2. In this backdrop, the submission of a proposal by CCTPL for review of its SOR, consequent processing of the proposal by this Authority, passing of the Order by this Authority and implementation of the Order by CCTPL should not amount to contravention of the High Court Order. It is noteworthy that the CCTPL has stated that they intend to take steps to intimate the Madras High Court in Writ Petitions No.12456 and 12457 of 2011 & Writ Petitions No.22196 and 22197 of 2011 about CCTPL filing a proposal for General revision of its Scale of Rates (SOR) with this Authority under Tariff Guidelines, 2019.

6.3. In this regard, based on a specific request to the CCTPL to furnish a copy of the intimation filed by it before the Hon'ble Madras High Court about CCTPL filing a proposal for General revision of its Scale of Rates (SOR) with TAMP under Tariff Guidelines, 2019, the CCTPL vide its email dated 16 October 2020 has, interalia, conveyed that they are in the process of filing the same and shall submit the same separately.

7. In view of the outbreak of COVID-19 and in pursuance of the Ministry of Shipping (MOS) letter No. 11053/30/2020-Coord. dated 16 April 2020 to hold a virtual meetings, a joint hearing in this case was held on 19 August 2020 thorough Video conferencing. At the joint hearing, the CCTPL made a brief power point presentation on the proposal. At the joint hearing, the CCTPL, the user organisations and the CHPT have made their submissions.

8.1. Based on a preliminary scrutiny of the CCTPL proposal, additional information/ clarification were sought from CCTPL on few points vide e-mail dated 25 August 2020**.** After reminders dated 29 September 2020 and 15 October 2020, the CCTPL has responded vide its email dated 16 October 2020. The information/ clarification sought and the response of CCTPL thereon are tabulated below:

Sl. No.	**Information/ Clarification sought by us**	**Reply furnished by CCTPL**
A.	**General**	
(i)	The CCTPL to furnish the copy of the Separate Agreement entered/ to be entered between CCTPL and Chennai Port Trust (CHPT), as per the stipulation contained in Clause 1.9 of the 2019 Guidelines.	We have submitted the draft agreement to CHPT and awaiting confirmation of the same from CHPT. The copy of the executed agreement will be submitted separately.
B.	**ARR Computation**	
(i).	In the Form -1 as furnished by CCTPL, an amount of ₹.16 lakhs is seen to have been considered towards 'Interest on delayed payment of taxes' as an adjustment of reduction of expenditure for the year 2016-17 at sl no. 3. However, the Annual Accounts of CCTPL for the year 2016-17 does not reflect any such expenditure. CCTPL to clarify the position.	In FY 2016-17 the Interest on delayed payment of tax was clubbed under Misc. Exps in Note 24 of the annual account. The same has been regrouped and shown separately in FY 2017-18 under Finance costs – previous year amounts. Ref Note 23 of the annual accounts of FY 2017-18.
(ii)	The Annual Accounts for the year 2016-17 reflect 'Net Exchange Loss on translation of financial assets and liabilities' to the tune of ₹ 16.8 lakhs. The CTPIL to justify the non consideration of the said expenditure for adjustment from Expenditure in the year 2016-17 in sl. No. 3 of Form no. 1.	The exchange loss is on account of revaluation of the creditors for imported spares. The actual exchange loss is incurred in the subsequent year when the actual payment is made to these creditors. However, these costs have been excluded in the revised Form 1 being submitted.

Sl. No.	Information/ Clarification sought by us	Reply furnished by CCTPL
(iii)	The schedule of 'Finance Costs' in the audited Annual Accounts of CCTPL for the year 2016-17, comprises of 'Exchange difference regarded as an adjustment to borrowing cost' and 'other borrowing cost'. The said heads of expenditure has not been considered for exclusion by CCTPL in the year 2016-17 from the total expenditure in sl. No. 3 of Form no. 1. The said expenditure is also to be excluded from the total expenditure.	The same has been excluded from total Expenditure in revised Form 1.
(iv)	The figures of Gross Fixed Assets as per IGAAP and Capital Work in Progress as on 31 March 2019 as considered in Form no. 1 are seen to be based on Form no. 7 furnished by CCTPL. With regard to Form no. 7, the CCTPL to furnish the following	
(a)	A reconciliation statement between opening Balance of the Gross Fixed Assets for each of the asset category viz., Plant and Machinery, Furniture and Fixtures, Office equipment, Computers, Intangibles, Vehicles and any other Fixed Assets for the years 2016-17, 2017-18 and 2018-19 as per IGAAP and INDAS.	FY 2016-17 was the first year of transition from IGAAP to IND AS. As stated in Note 2.3.ii to the annual accounts of FY 2016-17, the Company has opted to continue with the carrying value of all of its property, plant and equipment (other than assets covered under service concession arrangement) recognized as at 1 April 2015, measured as per the previous GAAP, and use that carrying value as the deemed cost of such property, plant and equipment. The reconciliation of the opening balance of the carrying cost of the assets under IND AS as at 1st Apri1 2015 is disclosed under Note 4A & 4B of the annual accounts for FY 2016-17. [The CCTPL has furnished reconciliation statement between the opening balance of the gross fixed assets for each asset category] Depreciation is being provided using the Straight Line Method, there is no difference between the depreciation as per IND AS and IGAPP, and hence no adjustment has been made in the total expenditure. The depreciation for each asset category has been shown in the above reconciliation statement.
(b)	Workings in support of the above, also to be furnished	
(c)	Workings in support of Depreciation in respect of each of the asset category viz., Plant and Machinery, Furniture and Fixtures, Office equipment, Computers, Hardware Network, Vehicles and any other Fixed Assets, for each of the years 2016-17 to 2018-19, to be furnished.	
(d)	The figures of disposal shown under gross fixed assets schedule as considered in Form no.7 for the year 2018-19 is not seen to match with the Annual Accounts of the year 2018-19. The CCTPL to consider the figures as per Audited Annual Account for the year 2018-19 in Form no. 7.	Necessary revision has been made in the revised Form No 7 and Form No 1.
(v)	With regard to the Working Capital in Form no. 3, the CCTPL to clarify/ furnish the following:	
(a)	Basis for the amount of Other Inventory considered in Form no. 3 to the tune of ₹197 lakhs may be furnished. CCTPL to also confirm whether it is six month's average consumption.	Other Inventory considered in Form 3 is the six months' average consumption of the stores & spares (excluding fuel and customized spares)
(b)	Workings in support of the Royalty Prepayments to the tune of ₹ 530 lakhs, considered in Form no. 3 to be furnished.	Royalty prepayment is done as per the conditions of the License Agreement with Chennai Port Trust. Enclosed as Annx-6, the invoice no FARS/201903/107 raised by Chennai Port Trust for the advance royalty to be paid towards April 2019 for ₹527.55 lakhs. The Royalty prepayment disclosed in Form 3 has been corrected to ₹527.55 lakhs, earlier considered at ₹530 lakhs.
(c)	In the calculation relating to Cash balance, the CCTPL is seen to have considered 'Interest on	Form 3 has been revised accordingly.

Sl. No.	Information/ Clarification sought by us	Reply furnished by CCTPL
	overdraft' and 'Interest on delayed payments', while determining one month cash expenses. The CCTPL to note that since these expenses are not considered as an item of expenditure while determining the tariff of CCTPL, the question of considering the these expenses, to arrive at the cash balance, is not found appropriate and hence to be excluded.	
C.	**Revenue Estimation**	
(i)	In Form 4, the CCTPL has indicated the average traffic at 6.48 Lakh TEUs based on the traffic for the years 2016-17 to 2018-19. In the same Form-4, for revenue estimation, CCTPL has considered various container mix. The aggregate of the said container mix to be matched with the average traffic of 6.48 Lakh TEUs and a working in this regard may also be furnished.	[The CCTPL has provided reconciliation of container mix with average traffic in the Annex – 2 of its letter].
(ii)	In the revenue estimation at the proposed level of tariff from Laden and Empty ICD Containers for 'Foreign going Vessel Long Haul' – (a). The CCTPL is seen to have considered the tariff of 'Transportation from QC to yard & Vice versa' at ₹579.35, ₹868.97 and ₹1,158.65 for 20', 40' and above 40' respectively. However, the rates proposed by the CCTPL in the proposed SOR at Section 3.3.2 is ₹585.89, ₹878.79 and ₹1171.49 for 20', 40' and above 40' respectively. (b). Likewise, the tariff of 'Cargo Wharfage' at ₹672.46, ₹1,008.69 and ₹1,344.92 for 20', 40' and above 40' respectively has been considered in the revenue estimation. However, the rates proposed by the CCTPL in the proposed SOR at Section 3.6 is ₹680.06, ₹1,020.09 and ₹1,360.11 for 20', 40' and above 40' respectively. The CCTPL to revise its revenue estimation so as to capture the income based on the rates proposed in the SOR or adjust the rates proposed in the SOR to match with the rates considered in revenue estimation.	Revenue estimation has been revised accordingly in Form 4 Revenue estimation has been revised accordingly in Form 4
(iii)	Also, the rates considered by CCTPL in the revenue estimation at the proposed level of tariff from Laden and Empty Transhipment Containers, are not seen to be as per the rates proposed by CCTPL in its proposed SOR. The CCTPL to revise its revenue estimation so as to capture the income based on the rates proposed in the SOR or adjust the rates proposed in the SOR to match with the rates considered in revenue estimation.	The Foreign Transhipment rates are matching with the rates proposed in the SOR. In the case of Coastal Transshipment tariff the tariff considered in the revenue estimation has been revised as per the rates considered in the SOR. [The CCTPL has furnished a statement showing Tariff calculation of Transhipment Containers showing the composition of the rates considered for Transshipment (Annexure 3).]
(iv)	The Authority vide its Order No. TAMP/12/2019-MUC dated 24 July 2019 has prescribed Mandatory User Charge at ₹155/- per container for the 1st year and ₹165/- per container for the next year, to be prescribed in the SOR of all the Major Port Trusts and BOT Terminals. However, the CCTPL in its revenue estimation is seen to have considered a rate of ₹157/- per container. The CCTPL to revise its revenue estimation so as to capture the	The revenue estimate under Form 4 & SOR have been corrected as required.

Sl. No.	Information/ Clarification sought by us	Reply furnished by CCTPL
	income based on the rate of ₹165/- per container. Further, the rate of MUC as indicated by CCTPL in its proposed SOR at sl. No. (xvii) of Section 3.12.13 also to be modified.	
(v)	In Form no. 4, the CCTPL has captured revenue at the proposed level of tariff to the tune of ₹4.43 crores as CFS Revenue. In this regard, the CCTPL to furnish the workings in support of the CFS revenue estimation.	[The CCTPL has furnished the workings of CFS revenue estimation (Annexure 4).]
(vi)	In Form no. 4, the CCTPL has captured rebate to the tune of ₹12.10 crores in the revenue estimation. In this regard, it is to state that the purpose of Form 4 is to establish that the sum of the revenue determined from all the tariff items as in the proposed SOR is within the ceiling of the ARR. Giving of rebate is the commercial decision of CCTPL. It need not form part of the Revenue estimation in Form no. 4. Even otherwise, the rates in the SOR are at ceiling level and the CCTPL has the freedom to levy lower tariff.	Rebate has been removed, revised Form 4 enclosed. These rebates will be claimed when submission of actual results.
D.	**Proposed Scale of Rates**	
(i)	It may be recalled that the Authority vide its Order No. TAMP/46/2007 – CCTL dated 30 September 2008 had unbundled the then prevailing consolidated charges for yard operations. The unbundling effected vide the said Order is not seen to have been incorporated by the CCTPL in its proposed SOR. The requisite changes may be made in the SOR and the income estimation in the Form no. 4 to be reviewed in the light of the said changes.	The revenue estimate & SOR have been corrected
(ii)	The penal rate of interest in the proposed SOR to be modified in line with Clause 5.4.1 of Tariff Guidelines, 2019.	SOR has been modified for the above
(iii)	The reason for not proposing any change in the quantum of rebate prescribed in Note no. 2.11 to be explained.	The lashing /unlashing activities are done aboard the vessel, whilst the operations of loading /discharge of containers may continue in the other bays of the vessel. As the gang will be working in close proximity to the loading /discharge operations, they need to be trained in all the safety precautions to ensure Zero harm to themselves, cargo and vessel. Hence the terminal operators will generally ensure that the gang trained by them would carry the activity. Given the critical nature of this activity, we would propose that the option of using external labour gang be excluded. The Tariff proposal envisages a reduction in handling tariff for containers loaded/ discharged from long haul vessels. For containers loaded/ discharged from other vessel only the WPI increase of 1.13% has been proposed, despite multifold increase in costs. Hence no change in the quantum of rebate has been proposed. As mentioned above, we request that this option of using external labour gang be excluded.
(iv)	The relevance of the proposed note no. 2.12 to be explained, given that it gives reference to the benchmark levels of productivity for the years 2007, 2008 and 2009.	As pointed out, the note 2.12 is not relevant in the present context, hence the SOR has been amended to exclude this clause.
(v)	The reason for increasing the free days from 3 to 10 days in respect of ‘Coastal Import	The flow of export / import containers into /out of the terminal are presently not aligned to the coastal

Sl. No.	Information/ Clarification sought by us	Reply furnished by CCTPL
	containers' & 'Change of status to local delivery' and from 7 to 10 days in respect of Coastal Export containers to be explained.	vessel calls, hence additional free days provided to support and reduce storage cost to trade. In order to facilitate and encourage nascent coastal trade, the free days for coastal containers have been increased.
(vi)	The reason for reducing the free days from 30 to 10 days in respect of Transhipment containers to be explained.	Transhipment containers are generally not stored in the intermediate terminal as speed of onward movement is essential. Considering the feedback for the trade, we propose to revise the reduction of free days from 30 to 20 days, the SOR has been revised accordingly.
(vii)	The reason for introducing a new storage schedule for 'Import Loaded DPD – Direct to factory' to be explained	Direct to Factory Import laden containers are cleared and delivery taken by the end customer from directly from terminal i.e. these are not moved by shipping lines to Container Freight Stations and delivery given from the CFS. This facility of direct delivery was initiated by customs to reduce the costs to the end users. To support and encourage the use of this facility, the higher free days has been proposed.
(viii).	The CCTPL is seen to have introduced charges for 3 services in Section 3.12.13 viz., Provision of Slings and Cleaning of containers. In this regard, the CCTPL to clarify/ furnish the following: (a). Nature of services proposed to be rendered in this regard. The same to be also indicated in the SOR. (b). Workings to arrive at each of the proposed rates.	The nature of services proposed has been indicated in the revised SOR namely as below (i). Containers which cannot be handled by use of the regular equipment, based on the request of the customer, the discharge /loading will be done by use of slings for handling the same. (ii). Empty containers may be cleaned on the request of the customer. [The CCTPL has furnished working to arrive the tariff for Provision of slings and Cleaning of containers (Annexure 5).] The working consider revenue share, man power cost, sling cost and equipment cost for containers cleaning.
(ix).	The Authority has passed Amendment Order No.TAMP/53/2015-VOCPT dated 25 September 2018 in common adoption Order No.TAMP/53/2015-VOCPT dated 26 November 2015 relating to provision prescribed for concessional coastal tariff for ships and cargo that move from one Indian Port to another Indian Port through the territorial waters of Sri Lanka or Bangladesh in terms of Notification No.38/2018- Customs (N.T.) dated 11 May 2018 issued by the Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, as common adoption Orders for all Major Port Trusts and BOT operators operating thereat including CCTPL. However, the CCTPL is not seen to have included suitable notes in the proposed SOR in line with common adoption Order. All notes prescribed vide common adoption Orders to be incorporated.	Clause 2.12 of the proposed SOR has been updated accordingly.
(x)	The CCTPL to confirm that it has estimated income for all the tariff items as proposed by it in its proposed Scale of Rates.	It is confirmed that CCTPL has estimated income for all the tariff items as proposed in its Scale of rates.

8.2. As brought out above, while furnishing the additional information and clarification, the CCTPL has revised its various tariff filing forms and has also furnished a revised draft SOR. A comparative position of ARR computation furnished by CCTPL vide its initial proposal dated 23 July 2020 and vide its e-mail dated 16 October 2020 is tabulated below:

Sl. No.	Description	As per initial proposal dated 23 July 2020			As per revised proposal dated 16 October 2020		
		2016-17	2017-18	2018-19	2016-17	2017-18	2018-19
(1).	**Total Expenditure (As per Audited Annual Accounts)**						
(i).	Operating expenses (including depreciation)	22,152	19,445	20,175	22,152	19,445	20,175
(ii).	Finance and Miscellaneous expenses (FME)	78	967	87	78	967	87
	Total Expenditure 1=(i)+(ii)	22,230	20,412	20,262	22,230	20,412	20,262
(2).	**Adjustments in respect of items where there is variation in figures reported as per INDAS (as per Audited Accounts) and IGAAP**						
(i).	Depreciation	-	-	-	-	-	-
(ii).	Other expenditure items, if any, to be listed	-	-	-	-	-	-
	Total of Adjustments 2=(i)+(ii)	**-**	**-**	**-**	-	-	-
(3).	**Less Adjustments:**						
(i).	Actual Royalty / Revenue share paid to the port	(8,279)	(8,060)	(8,423)	(8,279)	(8,060)	(8,423)
(ii).	Interest on delayed payment of taxes	(16)	(949.5)	(67)	(16)	(949.5)	(67)
(iii).	Interest on overdraft/term loan	(24)	(0.8)	(4)	(24)	(0.8)	(4)
(iv).	Provision for bad and doubtful debts	-	(6)	(62)	-	(6)	(62)
(v).	Provision for slow moving inventory	(22)	-	-	(22)	-	-
(vi).	Exchange difference regarded as adjustment to borrowing cost	-	-	-	(19)	-	-
(vii).	Other borrowing costs	-	-	-	(18)	-	-
(viii).	Net exchange loss on translation of financial assets and liabilities	-	-	-	(17)	-	-
	Total of 3 = [3(i)+3(ii)+3(iii)+3(iv)+3(v)]	(8,342)	(9,016)	(8,556)	(8,395)	(9,016)	(8,556)
(4).	**Add: Admissible Royalty/ Revenue Share as per Clause 2.2. of the Tariff Guidelines, 2019**	6,021	5,861	6,126	6,021	5,861	6,126
(5).	**Total Expenditure after Total Adjustments (5 = 1+2+3)**	19,909	17,257	17,832	19,855	17,257	17,832
(6).	Average Expenses of SI. No.5 = [Y1 + Y2 + Y3] / 3	18,832			18,315		
(7).	**Capital Employed**						
	(i). Gross Fixed Assets (Property, Plant & Equipment) as on 31st March 2019 (As per IGAAP)	59,468			60,632		
	(ii). Add: Capital Work in Progress as on 31st March 2019 (As per Audited Annual Accounts)	-			-		
	(iii). Add: Working Capital as per norms prescribed in clause 2.6 of the Tariff Guidelines, 2019	2,030			2,022		
	(a). Inventory	197			197		
	(b). Sundry Debtors	530			528		
	(c). Cash	1,304			1,298		
	(d). Sum of (a)+(b)+(c)	2.030			2,022		

	(iv). Total Capital Employed [(i)+(ii)+(iii)]	**61,498**	**62,654**
(8).	**Return on Capital Employed 16% on Sl. No.7(iv)**	9,840	10,025
(9).	**Annual Revenue Requirement (ARR) as on 31 March 2019 [(6)+ (8)]**	28,172	28,339
(10).	**Indexation in the ARR @ 100% of the WPI applicable for the year 2019-20 ie 4.26%**	**29,372**	**29,546**
(10 a)	**Indexation in the ARR as per (10) @ 1.13% applicable for the year 2020-21**	**29,704**	**29,880**
(11).	**Ceiling Indexed Annual Revenue Requirement (ARR) as given in Sr. No.10 above.**	**29,704**	**29,880**
(11 a)	**Voluntary Adjustment of Past Surplus - We draw your attention to Clause No 5 in Annexure 1 "Highlights of the Proposal". In this regards, while we do not admit to any past surplus, should any such surplus arise either out of mutual discussions or by a decision of the Madras High Court, the amount of ARR foregone by us amounting to Rs. 19,068 Lakh (Rs. 6,356 lakh X 3) should be adjusted against the same."**	**7,419**	**6,356**
(12).	**Revenue Estimation at the Proposed indexed SOR within the Ceiling indexed ARR estimated at Sl. No.11 above**	**22,285**	**23,524**

9. Based on the scrutiny of the CCTPL proposal, the Licensor port CHPT was also requested vide letter dated 25 August 2020 to furnish some additional information/ clarification. After a reminder dated 29 September 2020, the CHPT has responded vide its letter dated 8 October 2020. The comments of CHPT was forwarded to CCTPL vide e-mail dated 15 October 2020 for comments of CCTPL. The CCTPL vide its email dated 16 October 2020 has furnished its response on the comments of CHPT. The specific comments sought by us, response of CHPT and the response of CCTPL thereon, are tabulated below:

Sl. No.	Information/ Clarification sought by us	Reply furnished by CHPT	Comments of CCTPL
(i)	The copy of the Separate Agreement entered by CCTPL with CHPT, duly signed by both the parties, as per the stipulation contained in Clause 1.9 of the 2019 Guidelines, to be furnished.	Execution of separate agreement with CCTPL is under process. On execution, a copy of the same will be furnished to TAMP.	We are in agreement with ChPT comment.
(ii)	CHPT to furnish its comments on the computation of ARR as furnished by CCTPL in its Form no. 1.	No comments.	No comments
(iii)	In Form 4, the CCTPL has indicated the average traffic at 6.48 Lakh TEUs for the years 2016-17 to 2018-19. The said average traffic at 6.48 lakh TEUs to be confirmed by CHPT.	The cargo handled by CCTPL for 3 financial years are as follows : 2016-17 – 646319 TEUs 2017-18 – 646482 TEUs 2018-19 – 655385 TEUs Average – 649395 TEUs	The cargo handled by CCTPL for 3 Financial years are as follows 2016-17 - 646319 TEUs 2017-18 - 646481 TEUs 2018-19 - 653675 TEUs Average- 648825 TEUs
(iv)	CHPT to furnish its comments on the estimation of revenue at the	The gross revenue earned by CCTPL, as per the records of	The gross revenue reported by CHPT includes scrap

<table>
<tr><td></td><td>proposed level of tariff as furnished by CCTPL in its Form no. 4.</td><td>CHPT, for the 3 years are as follows :
2016-17 – ₹ 222.98 crores
2017-18 - ₹ 217. 11crores
2018-19 – ₹ 226.97 crores</td><td>sales and excludes rebates given.</td></tr>
<tr><td>(v)</td><td>CHPT to furnish its comments on the comparative statement furnished by CCTPL in Form no. 5, highlighting the changes/ amendments proposed by CCTPL in its proposed Scale of Rates vis-a-vis the existing Scale of Rates.</td><td>The terminal has proposed an increase of 1.13% for handling of FCL and LCL import and export containers, ICD import and export containers and transshipment containers, wharfage charges etc.

It has been proposed to increase the tariff by 28% for stuffing / destuffing of cargo and substantial increase in CFS charges citing the increase in labour wages from 2008 and other operating costs.

To attract origin / destination containers, the terminal has proposed reduction of 5% in tariff for containers loaded / discharged form Long Haul vessels.</td><td>We are in agreement with CHPT comment.

The activity of stuffing/ destuffing of container and the activities at CFS are highly labour intensive. The cost of labour has increased over the years. Given below is the increase in statutory minimum wages.<table><tr><td>Year</td><td>Minimum Wage in ₹.</td></tr><tr><td>2009</td><td>₹. 203 per day</td></tr><tr><td>2020</td><td>₹.629 per day</td></tr></table>The increase is 310%. Other operational costs have also increased over year. Thus necessitating increase in tariff.

We are in agreement with CHPT comment.</td></tr>
<tr><td>(vi).</td><td>---</td><td>CCTPL has filed writ petition in the High Court of Madras and obtained stay with regard to revision of charges by TAMP in the year 2011. In the present proposal, CCTPL has mentioned that the proposal is without prejudice to their rights and contentions included in W.P. Nos. 12456 and 12457 of 2011 and WP Nos. 22196 and 22197 of 2011 filed by them challenging TAMP orders and pending before the High Court of Madras. M/S. CCTPL has also mentioned in the highlights of the proposal that they do not admit past surplus, depending on the mutual decision pursuant to discussion in keeping with clause 3.1.1 of the Tariff Guidelines, 2019.</td><td>The said issues have been covered in CCTPL letter dated 23 July 2020, while forwarding the proposal. We have no further comments.</td></tr>
</table>

10. The proceedings relating to joint hearing held 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.

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

(i). The Scale of Rates of Chennai Container Terminal Private Limited (CCTPL) was last revised by this Authority vide Order dated 25 March 2011, following the Tariff Guidelines 2005. Vide the said Order, this Authority has effected an across the board reduction of 35% over the then prevailing tariff of CCTPL (i.e. tariff approved for CCTPL vide Order no. TAMP/45/2007-CCTPL dated 19 June 2008). Aggrieved by said reduction in its tariff, the CCTPL has challenged the tariff order of 25 March 2011 by its Writ Petition No. 12456 and 12457 of 2011 in the Hon'ble High Court of Madras. The Hon'ble High Court has stayed the operation of the Order and has permitted the Petitioner i.e. CCTPL to charge at the (higher) rates as per earlier Tariff Order dated 19 June 2008. The writ petition is yet to be disposed of by the Hon'ble Court.

(ii) In the meanwhile, the Ministry of Shipping (MOS), as a policy direction under Section 111 of the Major Port Trusts Act, 1963, has issued Tariff Guidelines, 2019, for BOT operators who were previously governed by 2005 Guidelines. Consequent to the issue of the Tariff Guidelines, 2019, by the MOS, the tariff fixation exercise in respect of the CCTPL is to be governed by the stipulations contained in the Tariff Guidelines, 2019 and the Working Guidelines issued to operationalize the Tariff Guidelines, 2019.

(iii). In this backdrop, the CCTPL has come up with a proposal in July 2020 for revision of its tariff, following the Tariff Guidelines, 2019 and the Working Guidelines issued to operationalize the Tariff Guidelines, 2019. The revision has been sought by the CCTPL on the tariff as approved by this Authority vide its Order dated 19 June 2008, which is now being levied by the CCTPL based on the Order of the Hon'ble Court.

(iv). The CCTPL has filed its proposal for general revision of its Scale of Rates in July 2020. Thereafter, in October 2020, while furnishing the additional information/ clarification, the CCTPL has revised its proposal after rectifying the errors. The said rectification has been carried out by the CCTPL only in the tariff filing forms and there is no change in the quantum of hike sought by CCTPL vide its initial original proposal of July 2020. The revised proposal of October 2020 along with the additional information/ clarification furnished by CCTPL and CHPT during the processing of the case is considered in this analysis.

(v). (a). Clause 2.1 of the Tariff Guidelines, 2019 requires the BOT Operator to assess the Annual Revenue Requirement (ARR) which is the average of the sum of the Actual Expenditure as per the final Audited Annual Accounts of the immediate preceding three years (Y1), (Y2) and (Y3) at the time of submitting the proposal subject to certain exclusions as prescribed in Clause 2.2., 2.3.1 and 2.3.2 of the Tariff Guidelines, 2019 and the Working Guidelines issued by this Authority plus Return at 16% on the Capital Employed obtaining as on 31st March Y3, duly certified by a practicing Chartered Accountant/ Cost Accountant.

(b). The CCTPL has assessed the Annual Revenue Requirement (ARR) for the three years i.e. 2016-17 (Y1), 2017-18 (Y2) and 2018-19 (Y3) duly certified by the practicing Chartered Accountant. The figures of operating expenditure and finance & miscellaneous expenditure as considered in revised Form-1 for the years 2016-17 to 2018-19 is seen to be as per the Audited Annual Accounts.

(c). While assessing the ARR, the CCTPL has not made any adjustments in respect of items where there is variation in figures reported in the Audited Annual Accounts as per IND AS (Indian Accounting Standards) and Indian Generally Accepted Accounting Principles (IGAAP) in ARR computation, as prescribed in Clause 2.3.2. of the Tariff Guidelines, 2019. In this regard, the CCTPL has stated that while transition of accounts from IGAAP to IND AS during the year 2016-17, the CCTPL has opted to continue with the carrying value of all of its property, plant and equipment (other than assets covered under service concession arrangement) recognized as at 1 April 2015, measured as per the previous GAAP, and use that carrying value as the deemed cost of such property, plant and equipment, due to which there are no IND AS adjustments in the financials.

Based on the above and also since the Form 1 (wherein the said adjustments need to have been captured) has been certified by a Chartered Accountant, the position as reported by CCTPL in this regard is relied upon.

(d). As prescribed in Clause 2.2 and 2.3.1 of the Tariff Guidelines, 2019, the CCTPL has excluded the following expenses, which are not admissible in ARR computation, in line with the provisions prescribed in Clause 2.2 and 2.3.1 of the Tariff Guidelines, 2019. The said adjustments are brought out for specific mention:

(i). Clause 2.2 of the Tariff Guidelines, 2019, *interalia*, stipulates that in those cases where the bidding process was finalized before 29 July 2003, the ARR computation will take into account the Royalty/ Revenue share payable to the landlord port by the BOT operator, to the extent of the next highest bidder .

CCTPL is a BOT operator, who falls in the pre July 2003 era. Thus, in case of CCTPL, the Royalty paid by CCTPL to the Licensor port CHPT is admissible as an item of cost to the extent of the next highest bidder. Accordingly, 72.72% of the Royalty as reflected in the Audited Annual Accounts for the years 2016-17 to 2018-19 has been considered by the CCTPL in the computation of ARR, in line with the clause 2.2 of the tariff guidelines of 2019, which was also followed when the tariff of CCTPL was being fixed earlier under 2005 Tariff Guidelines.

(ii). As per Clause 2.3.1 (ii) of the Tariff Guidelines, 2019, the CCTPL has excluded the provision for bad and doubtful debts as reflected in the Audited Annual Accounts for the years 2017-18 and 2018-19 respectively. Likewise, the provision for slow moving stores and spares as reflected in the year 2016-17 has also been excluded. The Audited Annual Accounts of CCTPL does not reflect any provisions towards provision for bad and doubtful debts during the year 2016-17 and provision for slow moving stores and spares during the years 2017-18 and 2018-19.

(iii). The CCTPL has also excluded the Interest on delayed payment of taxes, Interest on overdraft/ term loan, Exchange difference regarded as adjustment to borrowing cost and Other borrowing costs, as reflected in the schedule of 'Finance Costs' in the audited Annual Accounts of the respective years under consideration.

(iv). The schedule of 'Other Expenses' in the audited Annual Accounts for the year 2016-17 of CCTPL, which reflects an amount of ₹.16.80 lakhs towards 'Net exchange loss on translation of financial assets and liabilities' has also been excluded by CCTPL in line with the provision of clause 2.3.1(ii) of the Tariff Guidelines, 2019, to arrive at the ARR, after our query in this regard.

(v). Following the provisions prescribed at Clause 2.2, 2.3.1 and 2.3.2 of the Tariff Guidelines, 2019 as brought out above, the average expense for the years 2016-17 to 2018-19 has been worked out by CCTPL at ₹183.15 crores.

(e). (i). As per Clause 2.5 of the Tariff Guidelines of 2019, the CCTPL has worked out the figure of Capital Employed. Capital employed comprises of Gross Fixed assets as arrived as per IGAAP plus capital work in progress as on 31 March 2019. The CCTPL has furnished workings with regard to Gross fixed assets as per IGAAP duly certified by a Chartered Accountant. The value of Capital Work-in-Progress as on 31 March 2019 is reflected as Nil in the Audited Annual Accounts of CCTPL. Thus, the Gross fixed assets at ₹ 606.32 crores as on 31 March 2019, as considered by the CCTPL is considered in the analysis.

(ii). Clause 2.6. of the Tariff Guidelines, 2019 prescribes the norms for determining the working capital. Working capital comprises of Inventory, Sundry debtors and Cash balances, as per Clause 2.6 of the Tariff Guidelines, 2019. Limit on inventory for capital spares will be one year's average consumption and in case of other items of inventory the limit will be six months' average consumption of stores excluding fuels. Limit on cash balance will be one month's cash expenses. Advance payment of Revenue Share/ royalty and lease rental / license fee to the landlord port flowing from the contractual obligations is to be treated as sundry debtors.

(iii). The CCTPL has considered an Inventory excluding fuel and customized spares to the tune of ₹.1.97 crores. On a specify query, the CITPL has confirmed that the said figure of ₹.1.97 crores comprises of six months' average consumption of the stores & spares (excluding fuel and customized spares). The submission made by CCTPL is relied upon.

(iv). The CCTPL has considered an amount of ₹5.28 crores towards advance payment of Revenue Share as allowable Sundry Debtors under Working Capital in Form-3. The CCTPL has furnished an invoice in support of the ₹.5.28 crores being the advance Royalty paid by it to CHPT in March 2019.

In this connection, it is to state that as per provisions of the Licence Agreement entered between CCTPL and CHPT, Royalty/ Revenue share is to be paid in advance for each month for a Minimum Guaranteed Throughput (MGT) of 5 lakh TEUs per annum. Accordingly, average monthly Revenue share prepayment as per the Licence Agreement is worked out at ₹3.93 crores [Allowable Royalty for the year 2018-19 at ₹ 61.26 crores / actual traffic for the year 2018-19 at 648825 TEUs x MGT of 5 lakh TEUs / 12 months] and considered in the analysis.

(v). The cash balances to the tune of ₹12.98 crores as considered by CCTPL has been slightly moderated to ₹.12.93 crores, based on one month`s average allowable expenditure excluding depreciation and amortization amount as reflected in the Form-1 for the year 2018-19 [(₹.202.62 crores - ₹.85.56 crores + ₹.61.26 crores – 23.20 crores)/ 12 = ₹ 12.93 crores)].

(vi). Thus, based on the above, the Working Capital has been considered at ₹18.83 crores instead of ₹20.22 crores as considered by CCTPL.

(vii). As explained above, the total capital employed comprising of Gross Fixed Assets and working capital works out to ₹625.15 crores as against ₹ 626.54 crores as worked out by CCTPL.

(f). As per Clause 2.7 of the Tariff Guidelines, 2019, Return on Capital Employed (ROCE) at 16% is worked out on the revised Capital Employed, which works out to ₹100.02 crores, which is considered in the Annual Revenue Requirement (ARR) computation.

(vi). The ARR comprises of the average of the expenditure for the three financial years 2016-17 to 2018-19 plus 16% ROCE. Subject to modifications as explained above, the ARR has been worked out to ₹.283.17 crores, as against the ARR assessed by the CCTPL at ₹.283.39 crores.

(vii). Thereafter, as per Clause 2.8 of Tariff Guidelines, 2019, the said ARR needs to be indexed @100% of the WPI applicable for the year 2019-20 which is 4.26%. Accordingly, the indexed ceiling ARR for the year 2019-20 has been worked out to ₹295.23 crores (i.e. ₹.283.17 crores * 1.0426). Further, since the financial year 2020-21 has already commenced, the CCTPL is entitled for the WPI indexation applicable for the year 2020-21 as well, which is 1.88% for arriving the Ceiling Indexed ARR for year 2020-21. This Authority has also adopted similar approach of granting 100% WPI indexation for the year 2020-21 over the indexed ARR of 2019-20 while approving the Scale of Rates for International Seaports (Haldia) Pvt. Ltd (ISHPL) vide Order no. TAMP/7/2020-ISHPL dated 08 September 2020. However, in the instant case, the CCTPL has considered only 60% of the WPI indexation i.e. 1.13% (1.88 * 60%) for computation of Ceiling Indexed ARR for year 2020-21 in Form-1. The said anomaly is rectified and a WPI indexation of 1.88% is considered to arrive at the Ceiling Indexed ARR for year 2020-21. Accordingly, the ceiling indexed ARR works out to ₹300.78 crores, as against the ceiling indexed ARR worked out by CCTPL at ₹.298.80 crores. The detailed ARR calculation is attached as **Annex**. A summary of the ceiling indexed ARR, is given below:

(**₹ in crores**)

Sr. No.	**Particulars**	**ARR computation**	
		As furnished by CCTPL	**As Considered by us**
1	Average Expenses [Y1+Y2+Y3]/3	183.15	183.15
2	Capital employed as on 31.03.2019 including capital work in progress as on 31.03.2019 and working capital as per norms	626.54	625.15
3	Return on capital employed @ 16%	100.25	100.02
4	ARR as on 31 March 2019 (4=1+3)	283.39	283.17
5	Indexation in the ARR @ 100% of the WPI applicable for the year 2019-20 (4.26% for the year 2019-20)	295.46	295.23
6	Indexation in the ARR @ 100% of the WPI applicable for the year 2020-21 (1.88% for the year 2020-21 [CCTPL has applied @ 60% of the WPI applicable for the year 2020-21 (1.13% for the year 2020-21)	298.80	300.78
7	Ceiling Indexed Annual Revenue Requirement (ARR)	**298.80**	**300.78**

(viii). As per clause 2.9 of the Tariff Guidelines, 2019, based on the Ceiling Indexed ARR as determined at sl. no. 6 above, the CCTPL has to draw its proposed Scale of Rates

(SOR). As per Clause 2.10 of Tariff Guidelines, 2019, for drawing the SOR, the traffic to be considered would be the average of the actual traffic handled by the BOT operator during the years Y1, Y2 and Y3, duly certified by the concerned port. The average traffic for the years 2016-17 to 2018-19 has been considered by the CCTPL at 6,48,825 TEUs, However, the corresponding figure as reported by the Licensor port, CHPT is 6,49,395 TEUs, which is marginally higher by 0.08%. Since the difference as pointed by CHPT is insignificant and considering that the CCTPL has reconciled the average traffic with the container mix for revenue estimation. This Authority is inclined to proceed based on the average traffic figures as considered by CCTPL in its workings.

(ix). As per Clause 2.11.1 of Tariff Guidelines, 2019, the BOT Operators have the flexibility to determine the rates to respond to the market forces based on commercial judgment and draw the Scale of Rates within the ceiling of indexed ARR, duly certified by a practicing Chartered Accountant. While drawing up the proposed SOR, the CCTPL is seen to have proposed a general increase of 1.13% over existing Tariff, except in case of stuffing / destuffing charges an increase of about 28% has been proposed and in case of Reefer containers an increase of 11% has been proposed.

The CCTPL has given detailed working of revenue estimation indicating the tariff items in the proposed SOR for corresponding average traffic for the years 2016-17 to 2018-19, as required as per Clause 2.11.1. of the Tariff Guidelines, 2019. The revenue estimation at the proposal level of tariff as assessed by CCTPL is ₹.235.25 crores. This is seen to be lower than the Ceiling Indexed Annual Revenue Requirement (ARR) of ₹ 300.78 crores, as discussed earlier, thereby leaving a gap of ₹ 65.54 crores, which has been left uncovered by the CCTPL. The revenue estimation statement as assessed by the CCTPL has been duly certified by a Chartered Accountant.

(x). This Authority vide its Order No. TAMP/46/2007–CCTL dated 30 September 2008 had unbundled the then prevailing consolidated charges for yard operations prescribed at Sections 3.1.3., 3.2.2. and 3.3.3 in the then prevailing Scale of Rates of CCTPL. Since the unbundling effected vide the said Order was not seen to have been incorporated by the CCTPL in its proposed SOR submitted alongwith its proposal of July 2020, the CCTPL in its proposal of October 2020 has reported to have made the requisite changes in the proposed SOR. However, it is seen that while the unbundling effected vide the Order of September 2008 in Sections 3.1.3 (a), 3.1.3 (b), 3.3.3 (a) and 3.3.3 (b) have been incorporated, the effect of unbundling in respect of section 3.2.2 is not seen to have been incorporated by the CCTPL in its proposed SOR. The CCTPL has not given any reason for exclusion of the same in the proposed SOR. It is presumed that there was an omission on the part of CCTPL to incorporate this provision in the proposed SOR. The Unbundled charges in the respect of section 3.2.2 as approved by this Authority vide its order dated 30 September 2008 have been incorporated in the proposed SOR with a suitable increase as proposed by CCTPL in respect of charges Section 3.2.2.

(xi). The clause 2.12 of existing SOR prescribes benchmark level of productivity to be achieved in the 2008 and 2009. As the said clause has no relevance in the present day, the said clause has been proposed to be deleted by CCTPL, which is approved by this Authority.

(xii). The existing SOR at clause 2.11 prescribes that, if a terminal user provides, with prior consent of CCTPL, lashing/ unlashing gang for lashing operations of all containers in the vessel, then a rebate of ₹33/- per container in handling charges prescribed in Section 3.1.1, 3.2.1, 3.3.1 and 3.4 shall be allowed, subject to the terminal user agreeing to follow safety regulations. In this regard, the CCTPL has stated that given that the lashing /unlashing activities are done aboard the vessel by a gang of workers, the gang needs to be trained in all the safety precautions to ensure Zero harm to themselves, cargo and vessel. In view of this position, the CCTPL has stated that it ensures that the gang trained by them would carry out the activity. Thus, given the critical nature of this activity, the CCTPL has proposed that the option of using external labour gang be excluded. Looking into the safety aspects as highlighted by CCTPL, the proposal of the CCTPL to delete the existing note which prescribes a rebate for use of gang engaged by a terminal user, is approved.

(xiii). The CCTPL has introduced a new definition at clause 1.21 in respect of the Long Haul vessels so as to state that the Long Haul vessels would be the Vessels originating/ Destined from /to any ports in continents of Americas/ Europe/ Africa or ports beyond Singapore/ Malaysia. Simultaneously, the CCTPL has also introduced a separate tariff for the Long Haul Foreign going Vessels. The tariff in respect of the containers loaded / discharged from Long Haul vessels are pegged at lower level as compared to the other containers loaded / discharged from other foreign going Vessels, so as to incentivize long – haul vessels and to attract more of origin/ destination containers. The Licensor port CHPT has also acknowledged this position. The income from containers loaded / discharged from Long Haul vessels have been captured by CCTPL in its revenue estimation at the proposed level of tariff. Hence, this Authority is inclined to approve incorporation of the definition of Long Haul vessels as well as the separate tariff for containers loaded / discharged from Long Haul vessels, as proposed by CCTPL.

(xiv). The CCTPL has proposed increase in the free days from 3 to 10 days in respect of ‘Coastal Import containers’ & ‘Change of status to local delivery’ and has also proposed increase in the free days from 7 to 10 days in respect of Coastal Export containers, on the ground that the flow of export/ import containers into/ out of the terminal are presently not aligned to the coastal vessel calls and that the additional free days would help in reducing storage cost to coastal trade and thereby facilitate and encourage nascent coastal trade.

Clause 9.10.1 of the Workings Guidelines issued to operationalize the Tariff Guidelines, 2019, allows the individual BOT operators to propose free days. Accordingly, the proposal of CCTPL seeking an increase in the free days for the various categories of coastal containers, is seen to be a welcome move and is also within the stipulation contained in the Tariff Guidelines, 2019. Hence, the proposed increase in free days is approved.

(xv). Since Transshipment containers are generally not stored in the intermediate terminals, as speed of onward movement is essential, the CCTPL in its initial proposal of July 2020 had proposed to reduce the free days from 30 to 10 days in respect of Transhipment containers. However, subsequently in its proposal of October 2020, the CCTPL has proposed to reduce the free days from 30 to 20 days in respect of Transhipment containers based on the feedback from the trade.

As stated earlier, Clause 9.10.1 of the Workings Guidelines issued to operationalize the Tariff Guidelines, 2019, allows the individual BOT operators to propose free days. Accordingly, the proposal of CCTPL to reduce the free days for the Transhipment containers is within the stipulation contained in the Tariff Guidelines, 2019. Also, none the users have specifically objected the proposed reduction of free days. Hence, the proposed reduction in free days is approved.

(xvi) The CCTPL has reported that a facility of direct delivery has been initiated by Customs, wherein containers are cleared and delivery is taken by the end customer directly from terminal, so as to reduce the costs to the end users. Consequent to this facility, the CCTPL in its proposed SOR has introduced a new storage schedule for ‘Import Loaded DPD – Direct to factory’. To support and encourage the use of this facility, the CCTPL has proposed a higher free period of 5 days as compared to normal import containers, which enjoy a free period of only 3 days. The judgment of CCTPL in this regard it is relied upon. Hence, this Authority is inclined to approve the introduction of the storage schedule for ‘Import Loaded DPD – Direct to factory’ as proposed by CCTPL.

(xvii). The CCTPL has introduced charges for 2 services in Section 3.12.13 viz., Provision of Slings and Cleaning of containers. The service of 'Provision of Slings' at ₹ 450/- per container is reported to be rendered on the request of the customer to discharge/ load a Container by use of slings, when the said container cannot be handled by use of the regular equipment. As regards the service of 'Cleaning of containers' at ₹ 450/- per container, the said service is reported to be rendered on the request of the customer to clean Empty containers. The CCTPL has furnished workings in support of both the proposed charges. Since, none the users have specifically objected the introduction of proposed levy for the above mentioned two services and also since it is an optional service, which would be rendered only at the request made by the customer, the introduction of charges for Provision of Slings and Cleaning of containers, as proposed by CCTPL is approved.

(xviii) This Authority has passed Amendment Order No.TAMP/53/2015- VOCPT dated 25 September 2018 in common adoption Order No.TAMP/53/2015-VOCPT dated 26 November 2015 relating to provision prescribed for concessional coastal tariff for ships and cargo that move from one Indian Port to another Indian Port through the territorial waters of Sri Lanka or Bangladesh in terms of Notification No.38/2018- Customs (N.T.) dated 11 May 2018 issued by the Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, as common adoption Orders for all Major Port Trusts and BOT operators operating thereat including CCTPL. The CCTPL has included suitable notes in the proposed SOR in line with common adoption Order.

(xix). This Authority vide Order No. TAMP/12/2019-MUC dated 24 July 2019 has approved revised Mandatory User Charges (MUC) for DMICDC's Logistics Data Bank (LDB) project across all the Major Port Trusts and BOT operators operating thereat. Therefore, the revised MUC on containers for the Logistics Data Bank Service rendered by DMICDC approved by this Authority for a period of two years for common adoption by all Major Port Trusts and BOT terminals thereat shall be applicable in case of CCTPL also. The CCTPL has suitably incorporated the said provision in its proposed Scale of Rates.

(xx). As per the stipulation contained in Clause 1.9 of the Tariff Guidelines, 2019, the CCTPL and the Licensor port CHPT have to enter into a separate Agreement, agreeing to abide by the Tariff Guidelines, 2019. The CCTPL and CHPT have confirmed that they are in the process of entering into a separate Agreement. The CCTPL and CHPT is advised to expedite entering into a Separate Agreement and forward a copy of the same to this Authority, immediately after executing the Agreement.

(xxi). (a). Before we proceed to consider the revised SOR of CCTPL, it is pertinent here to draw reference to Clause 3.1.1 of the Tariff Guidelines, 2019, which stipulates that in case of the BOT operators, whose tariff have not been reviewed in the past due to litigations pending in the High Courts on the Tariff Orders passed by this Authority, the surplus/ deficit over and above the admissible costs and permissible return, if any, arising during the period of litigation will be subject to either the orders of the respective Courts or as per the treatment to be collectively decided by the Ministry of Shipping (MOS), concerned Major Port Trust, concerned BOT operator and this Authority.

(b). As stipulated in Clause 3.1.1 of the Tariff Guidelines, 2019, and based on clarification / information sought by CITPL and PSA SICAL (a BOT Operator at V.O Chidambaranar Port Trust) on treatment of past period surplus, a Draft Policy Framework to decide on the treatment of past period surplus/ deficit, over and above the admissible costs and permissible return arising during the period of litigation in respect of BOT Operators who have approached various High Courts and have obtained stay on the operation of the last tariff Order passed by this Authority, was prepared and forwarded to the MOS vide our letter no. TAMP/61/2018-Misc dated 26 April 2019, for deliberation by MOS with the concerned BOT operators, concerned Major Port Trusts and this Authority. The Indian Ports Association (IPA) has deliberated the matter with the concerned Major Ports, BOT operators and TAMP and the MOS is seized of the matter.

(c). Under this circumstance, without giving the impact of any adjustment of past period surplus accrued during the period of litigation, the income at the estimated level of tariff has been kept at the ARR level of ₹300.78 crores, by considering an increase over the existing level of rates being levied by the CCTPL i.e. the Court permitted tariff, as discussed in the earlier paragraphs. If any adjustment of surplus is carried out in the ARR of ₹ 300.78 crores, it may further reduce the ceiling indexed ARR.

(d). However, in this regard, it is to state that incase of CCTPL, the Hon'ble High Court of Madras has not yet passed Order disposing of the Writ Petition No. 12456 and 12457 of 2011 paving a way for treatment of surplus/ deficit. Neither the methodology for determination of surplus during the period of litigation nor the treatment to be meted out to the surplus accrued during the period of litigation has been firmed up. In the absence of any methodology for determination of surplus and in the absence of any manner treatment firmed up to deal with the surplus, this Authority is not in a position to carry out any adjustments in this regard, as of now.

(e). As brought out earlier, CCTPL has stated that while it does not admit to any past surplus, it has voluntarily considered a past period surplus adjustment of ₹ 63.56 crores per annum aggregating to about ₹190.68 crores for a period of three years.

(f). In the absence of any methodology for determination of surplus and in the absence of any manner of treatment of past period surplus, no adjustment of past surplus during the period of litigation was considered while disposing of the general revision proposal of other BOT Operators whose tariff was recently fixed based on the stipulations contained in the Tariff Guidelines, 2019, and wherein the matter is pending in High Courts viz., Chennai International Terminal Private Limited (CITPL), Gateway Terminals India Private Limited (GTIPL) and Nhava-Sheva International Container Terminal Private Limited (NSICT).

However, the case of CCTPL is unique as compared to the cases relating to CITPL and GTIPL. While in the case of CITPL and GTIPL, there was no gap left uncovered between the indexed ceiling ARR and the income estimated at the proposed level of tariff, in the case of CCTPL, there is a gap of ₹ 65.54 crores between the indexed ceiling ARR and the income estimated at the proposed level of tariff. In other words, even if an adjustment of past period surplus to the tune of ₹65.54 crores is effected from the indexed ceiling ARR, the CCTPL can still continue to levy its proposed increased rates.

Thus, this Authority has decided to earmark an amount of ₹65.54 crores per annum aggregating to about ₹196.62 crores for a period of 3 years to be considered for adjustment towards adjustment of the past period surplus, whenever the Hon'ble High Court of Madras passes Order disposing of the Writ Petition no. No. 12456 and 12457 of 2011 paving a way for treatment of surplus/ deficit or a decision from the MOS is received on the treatment of surplus/ (deficit) arising over and above the admissible costs and permissible return during the period of litigation whichever is earlier. In other words, past period surplus amount to the tune of ₹65.54 crores per annum is deemed to have been adjusted in the current exercise upto a period of 3 year and only a surplus over and above ₹ 65.54 crores per annum is to be considered for adjustment in future.

This Authority has accepted for such a similar type of adjustment of past surplus while revising the tariff of Nhava Sheva International Container Terminal Private Limited (NSICTPL), based on the stipulations contained in Tariff Guidelines, 2019, and wherein the matter is pending in High Court of Bombay.

(xxii). While approving the rates as proposed by the CCTPL, it is also to be noted by CCTPL that whenever the Hon'ble High Court of Madras passes Order disposing of the Writ Petition no. No. 12456 and 12457 of 2011 paving a way for treatment of surplus/ deficit or a decision from the MOS is received on the treatment of surplus/ (deficit) arising over and above the admissible costs and permissible return during the period of litigation whichever is earlier, the tariff of CCTPL approved now would be subject to review then, so as to capture the impact of the surplus that has arisen during the period of litigation.

(xxiii). It is relevant here to mention that we have vide our letter no. TAMP/46/2015-Misc dated 24 July 2015 communicated to CCTPL that the surplus quantified for the tariff cycle immediately preceding the challenged tariff Order and the tariff fixed in the said tariff order challenged by the CCTPL in the Hon'ble High Court of Madras will be taken up for review, based on the Ministry of Shipping (MOS) letter No. 14019/20/2009-PG dated 12 June 2015, subject to the permission of the Hon'ble High Court, as the matter is subjudice. Accordingly, an Affidavit has been filed by us in the Hon'ble Court in August 2015, *interalia*, praying before the Hon'ble Court to permit this Authority to review the order of January 2012 to give effect to the opinion of the Learned Attorney General of India as directed by the MOS. The matter is still pending before the Hon'ble Court. After receipt of the permission of the Hon'ble High Court, an exercise to quantify the surplus/ (deficit) based on the MOS letter has to be undertaken.

(xxiv). As per Clause 2.12 of the Tariff Guidelines, 2019, the SOR will be indexed annually to inflation to the extent of 60% of the variation in Wholesale Price Index (WPI) announced by the Government of India occurring between 1st January to 31st December of the relevant year. Such adjusted SOR will come into force from 1st May of the relevant year to 30th April of the following year. It is relevant here to state that in the instant case indexation for the year 2019-20 and 2020-21 is already considered in the ARR and for drawing the SOR. The next annual indexation in SOR will be applicable from 1 May 2021. That being so, a note is inserted in the SOR to the effect that the SOR approved by this Authority is subject to automatic annual indexation at 60% of the WPI to be announced by this Authority. The annual indexation will be from **01 May 2021**. The indexed SOR shall be intimated by the CCTPL to the CHPT, users and to this Authority.

12. In order to ensure that the submission of a proposal by CCTPL for review of its SOR, consequent processing of the proposal by this Authority, passing of the Order by this Authority and implementation of the Order by CCTPL should not amount to contravention of the High Court Order, the CCTPL was repeatedly requested to intimate the Hon'ble Madras High Court about the CCTPL filing a proposal for General revision of its Scale of Rates. However, the CCTPL has not made available any evidence to establish that it has intimated the Hon'ble Court about the CCTPL approaching this Authority for revision of the Court permitted tariff. Therefore, the revised SOR approved in respect of CCTPL shall come into effect after expiry of 30 days from the date of notification of the Order passed by this Authority in the Gazette of India or from the date the CCTPL intimates the High Court about the CCTPL getting approval of this Authority for revision of the Court permitted tariff, by way of filing an Affidavit in the Hon'ble High Court of Madras, whichever is later. The CCTPL is also advised to produce before this Authority an authenticated copy of the Affidavit immediately on filing in the Court. The implementation of the revised SOR without intimation to the Hon'ble High Court will be at the risk and responsibility of CCTPL.

13.1. In the result, and for the reasons give above, and based on a collective application of mind, this Authority approves the SOR and conditionalities of the CCTPL which have been notified separately. The effective date of the revised Scale of Rates and conditionalities governing the application of revised Scale of Rates will remain the same as already indicated in the separate Order dated 28 October 2020. Once the revised order comes into effect, it shall be in force for a period of 3 years subject to annual indexation. The approval accorded will automatically lapse thereafter unless specifically extended by this Authority.

13.2. The tariff of the CCTPL has been fixed based on the prevailing information and without considering any adjustment of past period surplus relating to the period of litigation. Therefore, whenever the Hon'ble High Court of Madras passes Order disposing of the Writ Petition no. 12456 and 12457 of 2011 paving a way for treatment of surplus/ deficit or a decision from the MOS is received on the treatment of surplus/ (deficit) arising over and above the admissible costs and permissible return during the period of litigation whichever is earlier, as stipulated in clause 3.1.1 of the Tariff Guidelines, 2019, the tariff of CCTPL to be approved now would be subject to review then, so as to capture the impact of the surplus that has accrued to CCTPL during the period of litigation.

13.3. As stipulated in Clause 7 of the Tariff Guidelines, 2019, the CCTPL shall furnish to this Authority, annual reports on container traffic handled, average moves by crane per hour and average dwell time for containers. The annual reports shall be submitted by the CCTPL within 90 days following the end of each of the year. Any other information which is required by this Authority from time to time shall also be furnished by CCTPL.

13.4. An analysis of variation will also be made at the time of the next general review of tariff of CCTPL at the end of the tariff validity period and adjustment of additional surplus will be made in the tariff to be fixed for the next cycle, in line with the stipulation contained in Clauses 3.2.1 and 3.2.2 of the Tariff Guidelines, 2019.

(T.S. Balasubramanian)
Member (Finance)

Annex

Computation of Annual Revenue Requirement under Tariff Policy, 2019 for Determination of Tariff for Chennai Container Terminal Private Limited operating at Chennai Port Trust.				
				Rs. in lakhs
Sl. No.	**Description**	**2016-17**	**2017-18**	**2018-19**
(1).	**Total Expenditure (As per Audited Annual Accounts)**			
(i).	Operating expenses (including depreciation)	**22,152**	**19,445**	**20,175**
(ii).	Finance and Miscellaneous expenses (FME)	**78**	**967**	**87**
	Total Expenditure 1=(i)+(ii)	**22,230**	**20,412**	**20,262**
(2).	**Adjustments in respect of items where there is variation in figures reported as per INDAS (as per Audited Accounts) and IGAAP**			
(i).	Depreciation	-	-	-
(ii).	Other expenditure items, if any, to be listed	-	-	-
	Total of Adjustments 2=(i)+(ii)+ -----	-	-	-
(3).	**Less Adjustments:**			
(i).	Actual Royalty / Revenue share paid to the port	(8,279)	(8,060)	(8,423)
(ii).	Interest on delayed payment of taxes	(16)	(949.5)	(67)
(iii).	Interest on overdraft/ term loan	(24)	(0.8)	(4)
(iv).	Provision for bad and doubtful debts	-	(6)	(62)
(v).	Provision for slow moving inventory	(22)		-
(vi).	Exchage difference regarded as adjustment to borrowing cost	(19)		
(vii).	Other borrowing costs	(18)		
(viii).	Net exchange loss on transalation of financial assets and liabilities	(17)		
	Total of 3 = [3(i)+3(ii)+3(iii)+3(iv)+3(v)]	**(8,395)**	**(9,016)**	**(8,556)**
(4).	**Add: Admissible Royalty/ Revenue Share as per Clause 2.2. of the Tariff Guidelines, 2019**	**6,021**	**5,861**	**6,126**
(5).	**Total Expenditure after Total Adjustments (5 = 1+2+3)**	**19,855**	**17,257**	**17,832**
(6).	Average Expenses of Sl. No.5 = [Y1 + Y2 + Y3] / 3			18,315
(7).	**Capital Employed**			
	(i). Gross Fixed Assets (Property, Plant & Equipment) as on 31st March 2019 (As per IGAAP)			60,632
	(ii). Add: Capital Work in Progress as on 31st March 2019 (As per Audited Annual Accounts)			-
	(iii). Add: Working Capital as per norms prescribed in clause 2.6 of the Tariff Guidelines, 2019			1,883
	(a). Inventory			197
	(b). Sundry Debtors			393
	(c). Cash			1,293
	(d). Sum of (a)+(b)+(c)			1,883
	(iv). Total Capital Employed [(i)+(ii)+(iii)]			**62,515**
(8).	**Return on Capital Employed 16% on Sl. No.7(iv)**			10,002
(9).	**Annual Revenue Requirement (ARR) as on 31 March 2019 [(6)+ (8)]**			28,317
(10).	**Indexation in the ARR @ 100% of the WPI applicable for the year 2019-20 i.e 4.26%**			**29,523**
(10 a).	**Indexation in the ARR as per (10) @ 100% of the WPI i.e. 1.88% applicable for the year 2020-21**			**30,078**
(11).	**Ceiling Indexed Annual Revenue Requirement (ARR) as given in Sr. No.10 above.**			**30,078**
(11 a).	**Voluntary Adjustment of Past Surplus**			**6,554**
(12).	**Revenue Estimation at the Proposed indexed SOR within the Ceiling indexed ARR estimated at Sl. No.11 above**			**23,524**

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/25/2020-CCTPL	**:**	**Proposal received from Chennai Container Terminal Private Limited (CCTPL) for general revision of its Scale of Rates.**

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The Container Shipping Lines Association (CSLA) is the only user has furnished its comments vide its email dated 13 August 2020 till the case was taken up for finalization. The comments of CSLA was forwarded to CCTPL for its feedback comments. The CCTPL vide its email dated 16 October 2020 has furnished its comments. The comments of CSLA and the response of CCTPL thereon is tabulated below:

Sr. No.	Comments of Container Shipping Lines Association (CSLA)	Response of CCTPL
1.	The member lines of CSLA have been doing all they can to try & control India's logistics cost, including offering extended free time during the lock-down period, in line with the advisories issued by the DG Shipping. on the other, CCTL is considering a revision in its scale of rates. If implemented, this will result in the cost of Indian exports & imports increasing even further, thereby making them absolutely uncompetitive in the global & domestic markets, respectively. This will also discourage shipping lines, who are already reeling under severe financial stress, from looking at CCTL as one of their ports of call either while commencing new services or while considering calling larger vessels at the port. In fact, some of the existing services themselves might be rationalized. Therefore, it is requested to consider in the matter so that the proposed increase is not implemented. On the contrary, efforts need to be made to get the existing charges reduced so as to help the Indian trade to compete effectively in international markets, particularly in today's COVID environment & encourage the shipping lines to call at CCTL	CSLA have mentioned that there is increase in tariff. It is submitted that the handling tariff has been reduced for containers which load on long haul vessels. For the other containers the tariff increase has been limited to nominal increase 1.13% only. It may be noted that there has been no tariff increase for past 12 years despite the yearly increase in all costs. The nominal increase in tariff may not have any adverse effect.

2. In view of the outbreak of COVID-19 and in pursuance of the Ministry of Shipping (MOS) letter No. 11053/30/2020-Coord. dated 16 April 2020, a joint hearing in this case was held on 19 August 2020 thorough Video conferencing. At the joint hearing, the CCTPL made a brief power point presentation on the proposal. At the joint hearing, the CCTPL, the user organisations and the CHPT have made the following submissions:

Chennai Container Terminal Private Limited (CCTPL)

(i). Last tariff revision was effected vide TAMP Order of July 2008. The current proposal of CCTPL is based on the Tariff Guidelines, 2019. The proposed tariff validity period is for a period of 3 years from 01.11.2020 to 31.10.2023.

(ii). The actual expenses for the year 2016-17, 2017-18 and 2018-19 have been considered subject to some adjustments and return of 16% on capital employed, as detailed in the proposal.

(iii). The ARR has been indexed by 4.26% as per escalation factor announced by TAMP for FY 2019-2020 and further indexed by 1.13% as applicable for 2021-22. Indexed ARR thus computed is at ₹. 29,704 lakhs.

(iv). Based on the proposed level of tariff, income has been estimated at ₹.22,285 lakhs. Thus, CCTPL has foregone an amount of about ₹.7,419 lakh per annum aggregating to ₹.22,257 lakh for a period of three years.

(v). We have generally sought an increase of 1.13% over the 2008 level of tariff.

(vi). In order to incentive more long –haul vessels to call CCTPL terminal and thereby increase Origin/ Destination volumes, CCTPL has proposed a new category of rates for FCL (laden) containers loaded/ discharged on Long Haul vessel. The rates for long –haul vessels is proposed by considering a 5% discount over normal containers.

(vii). Tariff for hazardous and Over Dimensions cargo has been proposed at a premium of 37.50% on Handling and Storage Charges, which is within the premium prescribed in the Guidelines.

(viii). Tariff for supply of Electricity to reefer container has been proposed at 10.113% increase over the present SOR due to increase in electricity rates.

(ix). In order to facilitate and encourage coastal trade, free days for storage of Coastal containers have been increased to 10 days for both Export and Import Coastal containers.

(x). Free days for DPD containers have been increased from the present 3 days to 5 days.

(xi). Free days for all Transshipment containers have been revised from the present 30 days to 10 days.

(xii). Under Miscellaneous charges, Movement to another terminal in port, charges for cleaning of containers etc. have been proposed. The income for the same has been captured.

(xiii). Tariff for certain items at CFS has been revised upward as detailed in the proposal.

Chennai Port Trust (CHPT)

(i). The last Order passed by TAMP fixing the tariff of CCTPL has been stayed by the Madras High Court. The matter is still pending. Now the CCTPL has come up with a proposal for review of tariff. The Court will have to be updated on the matter.

(CCTPL: We have already initiated the process of approaching the Court. We will file an Affidavit to intimate and appraise the Court on the matter and submit to TAMP before finalizing the case.)

(ii). There is no clarity on the adjustment of past period surplus of CCTPL.

(Member (Finance): As regards adjustment of past period surplus, the Government is seized of the matter.)

(iii). We have gone through the proposal of the CCTPL. We have no other comments.

Chennai Custom Brokers Association

(i). Considering the present pandemic situation, the business is down, fuel prices are high. Thus, this is not the right time to increase rates.

(ii). The CCTPL has introduced charges for movement to another terminal in port, charges for cleaning of containers. When will these rates be levied?

(CCTPL: These charges are applicable only if the users make a request for these services.)

Tamilnadu Chamber of Commerce

(i). Due to COVID pandemic, there is economic slowdown. The importers and exporters are under stress and financial strain. On behalf of the trade, it is requested that the present proposal of CCTPL seeking increase in tariff be deferred and postponed for another 6 months. The matter can be reviewed thereafter in the year 2021.

Member (Finance), TAMP

(i). How is the traffic at present in CCTPL?

(CCTPL: In the 1st quarter of this year, there was a significant drop in traffic to the tune of about 40% to 50% over the previous year's 1st Quarter. But recently, since the industries in the hinterland are opening up gradually, the exports are looking optimistic. Import has not improved. The traffic appears to stabilize in a couple of months.)

(ii). What is the status of the Separate Agreement to be entered into between CCTPL and CHPT, as stipulated in the 2019 Guidelines?

[CCTPL: We are in discussion with the Port on the matter. We will forward a copy of the Agreement to TAMP, after it is entered.]

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