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TARIFF AUTHORITY FOR MAJOR PORTS

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New Delhi,

2 July 2008

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 review application of the Chennai Container Terminal Limited for review of the Order dated 28 March 2007 as in the Order appended hereto.

(Brahm Dutt)
Chairman

Tariff Authority for Major Ports

Case No. TAMP/45/2007 – CCTL

The Chennai Container Terminal Private Limited

Applicant

ORDER

(Passed on this 19th day of June 2008)

This case relates to an application dated 7 June 2007 received from the Chennai Container Terminal Private Limited (CCTL) for review of its tariff approved in March 2007.

2.1. This Authority had passed an Order on 28 March 2007 disposing of the proposal from the CCTL for general review of its Scale of Rates (SOR). The Order was notified in the Gazette of India on 18 April 2007. The approved SOR has come into effect from 17 May 2007.

2.2. At the time of general review of the SOR of CCTL in March 2007, the estimated financial/ cost position for the 3 calendar years viz., 2007 to 2009 showed a surplus of 1.89% and 1.80% for the years 2007 and 2008 respectively and a deficit of 12.53% for the year 2009. The deficit for the year 2009 was purely on account of the anticipated diversion of traffic to the second terminal (to be) commissioned at CHPT by 2009. Since the position about the second terminal will be clear only by the later part of 2008, this Authority maintained a status quo in the tariff level for the years 2007 and 2008 and decided to consider any tariff adjustment for the year 2009 at a later stage.

3.1. With reference to the said tariff Order, the CCTL vide its letter dated 7 June 2007 has filed an application for review of its tariff, based on the following points:

- (i). Return on Capital Employed to be considered at 16% instead of 15%.
- (ii). Inflation rate for the expenditure projections to be considered at 5.4% instead of 5%.
- (iii). Exchange rate of Rs.41.73 per US\$ to be considered for tariff fixation instead of Rs.44.18 per US\$.
- (iv). Efficiency gains.
- (v). Terminal value.
- (vi). (a). Consideration of Sundry debtors in the working capital.
(b). Consideration of prepayments to the CHPT towards rent and royalty in the Working Capital.
- (vii). Charges prescribed for Bonded Trucking may be denotified.
- (viii). Introduction of performance linked incentive scheme.
- (ix). Introduction of a volume rebate scheme.
- (x). Submission of annual accounts through CHPT.

3.2. Based on the above submissions, the CCTL has worked out a deficit position in all the three years, and has asked for an increase of 14% in tariff over the three-year period 2007 to 2009. The CCTL has also requested to consider an interim relief by giving a hike of 7.50% with an option of coming for a review prior to the end of tariff cycle incase there is drop in volumes.

[The average net deficit as a percentage of operating income for the three year period as per the cost statement furnished by CCTL works out to 10.68%.]

3.3. As stipulated in Clause 3.3.1. of the revised tariff guidelines, application for review of a tariff Order can be entertained provided such an application is filed within 30 days of the notification in the Gazette of India. The CCTL Order was notified on 18.4.2007 and the CCTL filed the review application on 7.6.2007. In the interest of a good Order the CCTL review application was entertained, though there was a delay in submission of the review application by CCTL.

4. In accordance with the consultative procedure prescribed, a copy of the review application of the CCTL was forwarded to CHPT and also to the concerned user organisations for their comments.

5. The comments of the user organisations were forwarded to the CCTL as feed back information. We have not received response of CCTL in this regard.

6.1. We have vide our letter dated 16 May 2008 requested the CCTL and the CHPT to furnish additional information / clarifications. The CCTL vide its letter dated 19 May 2008 has responded. The additional information/ clarifications sought by us and the response of CCTL are tabulated below:

Sr. No.	Information/ clarification sought by us	Response of CCTL
(i).	<u>Terminal Value:</u> (a). The discounted terminal value receivable by CCTL as per the License Agreement (LA) considered in the Order dated 28 March 2007 includes discounted estimated residual value of the fixed assets as at the end of the 30 year license period. The residual value of fixed assets amounting to Rs. 59.90 Crores as at the end of the license period was taken from the 30 year statement furnished by CCTL at the time of fixation of its tariff in the year 2002. (b). The CCTL has brought out a new fact that it would not receive any compensation for assets having residual life of less than five years as per Article 13.06(C) of the License Agreement between the Chennai Port Trust (CHPT) and CCTL. (c). The CCTL to furnish a detailed analysis of investment to be made in the fixed assets during the concession period based on the 30 year statement earlier furnished by CCTL. The analysis should bring out the residual value and life of various categories of fixed assets that would be available at the end of the concession period.	The 30 year statement furnished by CCTL included fixed assets which had been acquired during the later half of the concession and had residual life of less than five years. In the existing tariff cycle all assets deployed and proposed to be deployed while rendering services would have completed its useful life at the end of the concession and hence not considered for the purpose of arriving at the terminal value. The CCTL in its letter dated 26 October 2006 had brought out this fact. The investments proposed to be made for future period cannot be considered for adjusting the residual value in this tariff cycle. Also, as per the matching concept in normal accounting principles, the future investments and associated residual value computation is not relevant in the existing tariff cycle. Thus, the analysis requested by this Authority does not have any relevance in fixation of tariff for the proposed cycle. It is also requested that the prevailing exchange rate of US\$ may be considered to arrive at the residual value computation.
(ii).	<u>Efficiency gain:</u> (a). Clause 2.4.1. of the revised tariff guidelines stipulates that the benchmark for efficiency will be the actual cost reduction	Clause 2.4.1 of the guidelines considers 'actual costs' and do not require differentiation of the costs into fixed and variable costs. The intent of

achieved due to efficiency improvement in the previous tariff cycle. 50% of such cost reduction has to be considered for estimating the relevant expenditure while fixing tariff for the succeeding tariff validity period. The claim of the CCTL for efficiency gain is based on the comparison between the average unit variable cost for the years 2004 and 2005 with that of the year 2003. This approach adopted by CCTL does not appear to satisfy the stipulation made in Clause 2.4.1. of the revised tariff guidelines. (b). It is also not established by CCTL that the effect of efficiency improvement has reduced the estimated cost of relevant items of expenditure for the years 2007, 2008 and 2009 considered in the tariff revision exercise. In fact, the CCTL had estimated relevant items of expenditure for the years 2007 to 2009 by applying the escalation factor taking the year 2006 as base. The benefit of efficiency improvement to be available to the users during the tariff validity cycle upto the year 2009 may have to be assured by CCTL upfront. (c). In this backdrop, the CCTL to furnish an analysis with workings showing a comparison of the relevant items of actual variable cost incurred during the period 2004 and 2005 (covered by tariff Order dated 4 May 2004) with the corresponding relevant items of actual variable cost incurred during the years 2002 and 2003 (covered by Tariff Order dated 6 March 2002). If any cost reduction in the relevant items of variable cost emerges, 50% of such cost reduction to be accounted for in	the guideline is to provide the benefit of 'efficiency improvement' including handling of higher volumes. CCTL has managed to handle higher volumes through efficient use of available resources and achieving higher capacity utilisation. The average of past performance reflects in the cost estimates, which are at actual and have been already provided to TAMP. Thus the efficiency gain computation provided by CCTL earlier is in line with the guidelines. As indicated by the Authority to separate the cost reduction achieved due to improvement in efficiency and due to other factors, the CCTL separated the fixed costs and variable costs and also furnished the unit cost per unit over the years, which clearly demonstrates the reduction in variable cost per unit. Reduction in unit variable cost is not possible without improvement in efficiency and productivity. Hence, the claim of CCTL of Rs.129/- per TEU as their share of efficiency gain is accurate and is in line with Clause 2.4.1 of the revised tariff guidelines. It has been clearly established that the variable cost has reduced from Rs.365/- per TEU in the year 2003 to Rs.256/- per TEU during the years 2004 and 2005. CCTL is of the view that no justification is required to demonstrate that the cost reduction is on account of efficiency improvement as per the guidelines. The revised operating cost of 2006 has been considered as a base to work out the cost estimates for 2007 to 2009. This has resulted in significantly lower variable cost as compared to the variable cost in previous tariff cycle duly adjusted for inflation factor. Thus, the actual benefit of cost reduction has already been passed on to the trade. The claim for efficiency gains due to the terminal operator for the previous cycle is proposed to be recovered from the trade in the existing cycle as per the guidelines. The actual costs working for the year 2002 has been updated. Infact, based on the average variable cost per unit for 2002 and 2003 as compared to 2004 and 2005, the efficiency gains are higher at Rs.137/- per TEU as compared to the CCTL's earlier claim of Rs.129/- per TEU. It is requested that appropriate efficiency gains may be considered as per the spirit of the guidelines. The guideline 2.4.1 does not specifically require the details of method in which the terminal
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	the estimations of corresponding relevant items of variable cost projected for the years 2007, 2008 and 2009. The estimates of relevant items of variable cost furnished by CCTL for review of its tariff vide Order dated 28 March 2007 to be suitably modified.	operator achieves the cost reductions. Hence the details of specific item of cost reduction is not submitted. CCTL has managed to reduce the unit cost of operation inspite of inflation. This direct benefit in terms of tariff is passed on to the users. It is requested that appropriate efficiency gains may be considered as per the spirit of the guidelines.
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6.2. The CHPT has not furnished additional information/ clarification sought by us till the finalisation of the case.

7. A joint hearing on the case in reference was held on 28 January 2008 at the CHPT premises. During the joint hearing, the CCTL and some of the user organisations made their submissions. As agreed in the joint hearing, an officer level meeting was held on 25 February 2008 when CCTL explained its calculation on efficiency gain.

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

9. It is noteworthy that the cost analysis contained in the earlier tariff order of March, 2007 was based on the general practice adopted by this Authority to decide the tariff cases. Some of the issues raised by CCTL in this proceeding are found to be pertinent which may call for fresh look at the practice followed so far. The Authority deliberated on these issues in detail and decided to modify the existing practice as discussed in the succeeding paragraphs. For instance, it may be necessary to modify the approach on considering WPI, ROCE and rate of foreign-exchange when these parameters undergo a change before implementation of the approved tariff. Henceforth this approach will be adopted in similarly placed situations arising in tariff cases.

10. The various points on which the CCTL has sought review of the earlier Order are analysed taking into consideration the totality of the information collected during the proceedings:

(i). **Return on Capital Employed:**

Points made by CCTL in its review application with reference to paragraph No.14 (ix) of tariff Order of March 2007

As per Clause 2.9.2 of the revised guidelines, this Authority is required to review the rate of ROCE in April every year, in light of changes in key parameters. Accordingly the review of the existing rate of ROCE was undertaken by this Authority based on the updated value of concerned parameters obtained from CRISIL Advisory Services. Vide notification No. TAMP/27/2005-Misc dated 15 May 2007 the revised ROCE has been fixed at 16% for cases decided in the financial year 2007 – 08. The order on the proposal sent by CCTL has been notified in the official gazette on 17th April 2007. By this notification (No. TAMP/21/2006-CCTL, this Authority has disposed of CCTL proposal for revision of the Scale of Rates. The order was communicated to CCTL on 19th April 2007, and has been stated to come into effect on 18th May 2007. Taking any or all of these parameters, it is well-settled that the matter was decided in the financial year 2007-08. The case was clearly decided in the financial year 2007-2008. Therefore, this Authority may make necessary correction in the consolidated income & cost statement forming part of the order to reflect the revised ROCE.

Analysis

Clause 2.9.2 of March 2005 tariff guidelines requires this Authority to review the rate of ROCE in April every year in the light of changes in the underlying parameters. Therefore, the rate of ROCE was reviewed in the beginning of the year 2007-08 in the light of changes in underlying key parameters and revised to 16% for the year 2007-08.

As a result, the ROCE has undergone a change due to change in the financial year, which occurred between the time of the Order i.e. 28 March 2007 and its implementation i.e. 17 May 2007. Since the revised tariff approved come into effect from the financial year 2007-08 and remain valid for a three-year period, it is appropriate to capture the parameters pertaining to the year 2007-08. That being so, the cost statements are redrawn by considering ROCE at 16% as applicable for the year 2007-08.

(ii). **Inflation:**

Points made by CCTL in its review application with reference to paragraph No.14 (iii) of tariff Order of March 2007

Clause 2.5.1 of the revised guidelines requires that the expenditure projections of the terminal operators should be in line with tariff adjusted for price fluctuations with reference to current movements of Wholesale Price Index (WPI) for all commodities announced by Government of India. Vide notification No. TAMP/27/2005-Misc dated 15 May 2007; the rate of 5.4% has been notified for all orders passed by this Authority during 2007 – 08. While the rate of increase in various component of costs submitted by CCTL would be significantly higher than 5.4%, and have justified the same in earlier submissions, this Authority had granted an increase in costs at only 5%. The newly notified rate be considered for revision and amendments of the estimates.

Analysis

Clause 2.5.1 of the tariff guidelines requires that the expenditure projections of the major ports / terminal operator should be in line with traffic adjusted for price fluctuations with reference to current movement of Wholesale Price Index (WPI) for all commodities as announced by the Government. Accordingly, escalation factor of 5.40% should be considered for the expenditure projections for the year 2007-08.

The annual escalation factor has undergone a change due to change in the financial year, which occurred between the time of Order i.e. 28 March 2007 and its notification i.e. 18 April 2007. Since the revised tariff approved came into effect from the financial year 2007-08 and will remain valid till the end of 2009, the expenditure projectionssould be made based on the annual escalation factor of 5.40% pertaining to the year 2007-08. That being so, the cost statements are redrawn by considering the escalation factor of 5.4% for estimation of expenditure.

(iii). **Exchange Rate:**

Points made by CCTL in its review application with reference to paragraph No.14 (vii) of tariff Order of March 2007

This Authority has applied an exchange rate of Rs.44.18 per US Dollar for the purpose of tariff fixation, against the exchange rate of Rs.41.73 per US\$ as on 17 April 2007. In fact the exchange rate has fallen below Rs.41 per US\$ since the last one month. In view of this, it is requested that this Authority apply the correct exchange rate prevailing on date of disposal of the case. An exchange rate of Rs.41 per USD has been considered in the rectification application.

Analysis

The submission of CCTL is to be viewed in the backdrop of significant change in the exchange rate that had taken place between the time of Order i.e. 28 March 2007 and the notification of the Order i.e. 18 April 2007. Since the CCTL tariff Order was notified on 18 April 2007, the exchange rate of Rs.42 as was prevailing on the date of notification is considered and the income estimates are reworked accordingly.

It is to be mentioned here that the exchange rate has crossed the level of Rs.42 per US \$ as of now. Since estimates for 3 years are considered, it is expected that short term fluctuations in exchange rate may get evened out over the period of 3 years. In any case, the actual income realized by the CCTL during the current tariff validity period including on account of dollar denominated tariff will be reckoned with at the time of the next tariff revision in terms of Clause 2.13 of the guidelines.

(iv). **Terminal Value:**

Points made by CCTL in its review application with reference to paragraph No.14 (v) (o) of tariff Order of March 2007

This Authority has continued with the values considered in the earlier order. The revised working provided by CCTL is not considered. This Authority has indicated that this issue has adequately been dealt in the earlier orders of this Authority and there is no reason for deviating from the earlier approach. This Authority should recognize that the payment towards moveable assets due for at the end of 30 years cannot be ascertained at this point of time.

None of the existing as well as assets proposed to be added during the period upto 2009 will have any residual value at the end of the licence period. It may also be noted that as per article 13.06 (c) of the licence agreement, CCTL will in any case not receive any compensation for equipment having residual life of less than 5 years. Any residual value should only be dealt with at the time such assets come into existence. At present, as explained above, all assets would have completed its prescribed life before the expiry of the licence agreement and no compensation accrue for such assets. Hence any adjustment for terminal value can be considered only when assets, which will have remaining life at the end of the licence period, come into existence and this depreciation is allowed. Since at present no assets are either available or proposed, no terminal value can be considered for such assets.

Though CCTL does not dispute the methodology recommended by this Authority for this computation, the values considered for this computation should only be US\$ 1 Million, which is the terminal value payable by the CHPT at the end of the license period.

Analysis

- (i). CCTL has acknowledged that it has no dispute over the methodology adopted in determining the annualised terminal value. However, the argument of CCTL is that the existing assets and the assets proposed to be added during the current tariff validity period upto 2009 will not have any residual value at the end of 30th year of the license period.
- (ii). The discounted terminal value receivable by CCTL considered in the Order dated 28 March 2007 includes discounted estimated residual value of the assets as at the end of the 30 year license period. It may be recalled that the residual value of assets amounting to Rs.59.90 Crore as at the end of the license period was taken from the statement furnished by CCTL at the time of fixation of tariff in the year 2002. This receipt was annualized over the entire project life by discounting it at appropriate discount rate.

- (iii). If the contention of the CCTL that it would not be left with any assets with a residual life of more than 5 years at the end of the concession period is correct, then there would not be any compensation on this account payable by the landlord port (CHPT) to the CCTL. It is noteworthy that the terminal value at the end of the 30th year as far as the equipment is concerned depends on the value determined by an independent valuer on the basis of replacement cost less depreciation as stipulated in Article 13.12 of the LA.
- (iv). As per the concession agreement, the purchase of equipment by the Port Trust is optional and the licensor can take over equipment with residual life of less than 5 years without any compensation. In case of other equipment, value is to be determined by independent valuer on net replacement cost. From the earlier analysis furnished by CCTL, it could not be ascertained whether all the equipment considered would have residual value more than 5 years at the end of the concession period. Further, the analysis was based on historic cost whereas the CCTL may get higher compensation at replacement cost. It is, therefore, found that the balance of convenience would be to consider the terminal value in the last 2 or 3 tariff cycles of CCTL when the position may become clearer. Consequently, the position maintained in the Order of March 2007 needs to be reviewed by excluding terminal value in this regard. Notwithstanding such review, the position maintained prior to the year 2007 in the earlier tariff Orders are not altered and credit may be given to the amount considered prior to 2007, when the terminal value of equipment is considered in tariff computation at the later stage.
- (v). **Consideration of Sundry debtors and prepayments in the working capital:**

Points made by CCTL in its review application with reference to paragraph No.14 (v) (u) (i) & (ii) of tariff Order of March 2007

As per clause 2.9.9 of tariff guidelines TAMP may allow working capital on examination of its reasonableness. In addition, the guideline specifies upper limit of two months in case of estates dues and railway terminal charges. This Authority has incorrectly interpreted the guidelines by assuming that all business should have no debtors at any point of time. Even if the payment terms are immediate, there is a cycle time up to 5-7 days in raising the invoice and another 7 days by the shipping lines for making the payment. In view of that the amount claimed by CCTL as 12 days is fairly reasonable. Hence this Authority is requested to allow at least 12 days annual revenue as sundry debtors.

The prepayments considered by CCTL have not been taken into account for the purpose of assessment of working capital, since the prepayment to the Port authorities towards the rent and royalty is not an item prescribed for consideration as working capital in the guidelines. Clause 2.9.9. of the revised tariff guidelines clearly indicates that the list specified in the guidelines is an indicative one and unless TAMP believes that the prepayments to port are unjustifiably expanded it should be considered in the computation of capital employed.

Analysis

- (i). Clause 2.9.9. of the tariff guidelines deals with admissibility of working capital which includes Sundry Debtors. The CCTL does not operate the railway facility and, therefore, no amount is payable to it by Railways towards Terminal charges. However, clause 2.9.9 the guideline permits the Authority to examine the reasonableness of various items of Working Capital. Therefore, the estimated Sundry Debtors claimed by CCTL has been reviewed to find out such debtors arising due to inevitable and mandatory transactions.

- (ii). The request of the CCTL to consider Sundry Debtors as an item of current asset is based on the time taken to bill for the services rendered by the operator and the time reportedly taken by the Shipping Lines to make the payment. But, CEPsAA has stated that Shipping Lines are required to maintain advance with CCTL.
- (iii). It is noteworthy that in the proceedings before the Authority relating to the representations made by the port user organisations for waiver of charge on containers, which could not be cleared during the strike period at CCTL (Order dated 30 September 2004), the CCTL confirmed that it maintains Deposit accounts of the users. This shows that CCTL realizes money in advance from the port users and there may not be any occasion for port charges outstanding with the users even for a day.

In view of the above position the question of allowing 12 days annual revenue as sundry debtors does not appear to arise.

- (iv). As per Article 5.02 (d) of the LA entered between CCTL and CHPT the royalty is payable by CCTL to CHPT on monthly basis in advance for each month for a minimum guaranteed throughput of 5 lakhs TEUs per annum. Likewise, the CCTL is required to pay the lease rent for the lands allotted to it in advance every year as stipulated in Article 5.04 (a) of the LA.

Since the above said advance payments are governed by LA provisions there is a case to consider such pre-payments as part of working capital for the purpose of allowing return.

The CCTL has claimed an amount of around Rs. 1150 lakhs each for the years 2007 to 2009 as the monthly Royalty pre-payment to CHPT. On scrutiny of the claim of the CCTL, it appears that the amount of Rs. 1150 lakhs is estimated income arising out of minimum guaranteed throughput of 41667 TEUs per month. Therefore, the claim does not appear to be correct for the reason that only royalty at the permissible level of estimated operating income can be the pre-payment.

The permissible level of the estimated operating income for 5 lakh TEUs per annum is considered as pre-payment on monthly basis as working capital for all the years under consideration for the purpose of allowing return. The Royalty pre-payment works out to Rs. 281.32 lakhs, Rs. 280.45 lakhs and Rs. 279.74 lakhs for the years 2007 to 2009, respectively.

The CCTL had furnished an estimate of Rs.881.59 lakhs each for the years upto 2009 towards payment of lease rental to the CHPT which was accepted by this Authority in March 2007 Order. However, the CCTL has considered an amount of Rs. 725 lakhs each for the year 2007 to 2009 as pre-payment towards lease rent to CHPT. The advance payment will get adjusted against the rent payable for the respective month and at the year end of the entire advance is adjusted. That being so, the average of the pre-payment at 50% of Rs. 725 lakhs at Rs. 362.50 lakhs is considered as part of Working Capital for each of the year 2007 to 2009 for the purpose of allowing return.

(vi). **Bonded Trucking:**

Points made by CCTL in its review application with reference to paragraph No.14 (xxiv) of tariff Order of March 2007

TAMP is an Authority constituted under the provisions of the Major Port Trusts Act 1963. Under the provisions of the MPT Act, the major ports or other persons authorized under the Act can undertake services falling under sec 42 (1) of the Act. It is only these services that TAMP is required or empowered to fix tariff for. In this

instance, the bonded trucking service offered to the customers of CCTL to facilitate transportation outside the port area is not within the ambit of the Major Port Trust Act, and accordingly outside the realms and scope of Tariff Regulation under the Act.

The reasoning given by this Authority in the order essentially summarizes the need for notifying the tariff on account of:

- (i). Uncertainty on the ability of CCTL to provide the service since it is special purpose vehicle
- (ii). Request from CHPT
- (iii). Request from trade

There is no bar against CCTL from providing a service other than those mentioned under section 42 of MPT Act, and the same does not need tariff notification. It is surprising that the trade, which could only benefit from this service being outside TAMP regulation, is stated to have opposed CCTL stand. In any event and in the alternative, a request from CHPT or Trade should not be the reason for notifying the tariff. Since notification of tariff for this service is not required under the MPT Act, the rate may be de-notified.

Analysis

The CCTL offers the bonded trucking service to its customers to facilitate transportation outside the port area. The CCTL has maintained its position that it offers bonded trucking service for transportation "outside port area".

On review of the position, it appears that the function of transportation of goods under Customs bond as provided by CCTL is a normal function undertaken by any private clearing and forwarding agent. As such it may not be correct to classify this function as a mandatory service to be provided by the port trust or the private terminal operating thereat under Section 42 of the MPT Act. Just because the concessionaire provides a service to the users, it may not be correct to interpret that such services would automatically come under the regulatory oversight of this Authority. Therefore, Bonded Trucking service provided by CCTL may not come under the scope of Section 42. If the service is not covered under Section 42, a tariff levied on this account may not require approval of this Authority under Section 48 of the MPT Act.

In view of the above position, the rates notified for Bonded Trucking services under Sections 4.8 and 4.9 in the Scale of Rates of CCTL are deleted. The estimated income for the years 2007 to 2009 arising out of the bonded trucking services are excluded from the total estimated income for the relevant years. By way of abundant caution, it is to be mentioned that the decision to delete the relevant tariff item should not be construed as an incidental approval of this Authority to the service provided by CCTL. It is for the Licensing Authority i.e. CHPT to ensure that its Licencee is functioning within the scope of the licence granted by it.

- (vii). **Non-payment by port users for delays beyond the reasonable level attributable to port:**

Points made by CCTL in its review application with reference to paragraph No.14 (xvi) (b) of tariff Order of March 2007

- (a). Efficiency Linked Tariff Model

In spite of our submission, this Authority has incorporated necessary provisions for non-payment by port users for delays beyond reasonable level attributable to port. However in view of our submissions this Authority has requested CCTL to come up with a suitable efficiency linked tariff model with a built in penalty and reward scheme. CCTL has commenced discussions with customers. The customers are willing to consider reward cum penalty scheme. However the exact agreement will differ from

customer to customer depending on the size and nature of ship. In view of this, this Authority may incorporate the following in the scale of rates of CCTL.

“Based on mutual agreement reached between customers and CCTL over the minimum benchmark productivity levels, a performance linked incentive scheme will be applicable. The agreed efficiency linked incentive / penalty for non performance will not exceed + / - 10% of the published terminal handling charges.”

(b). Volume Rebate:

(i). In view of forthcoming competitive scenario and in order to achieve the projected volumes, CCTL will be required to grant volume based rebate to its customers to protect the loss of volumes to competition.

(ii). The volume rebate proposed for 2007 – 2009 would be on the following basis:

- (a). Volume rebate will be applicable only on mainline vessels.
- (b). No volume rebate will be applicable on Transshipment and coastal boxes
- (c). Volume rebate will be applicable only if the non-transshipment, non-coastal volume of a particular customer crosses 100,000 TEUs in the relevant calendar year.
- (d). The volume rebate structure, if applicable as above, will be as enumerated below:

Annualized Throughput in TEUs (Excluding Transshipment & coastal Volume)		Qualifying Volume	% Rebate Applicable
From	To		
1	50,000	50,000	2%
50,001	75,000	25,000	4%
75,001	100,000	25,000	5%
100,001	125,000	25,000	7%
125,001	150,000	25,000	8%
150,001	175,000	25,000	9%
175,001	Above	In excess of 150,000	10%

This Authority may incorporate the above rebate structure in the scale of rates.

(iii). Based on mutual agreement reached between customers and CCTL a volume rebate structure could be agreed whereby the maximum rebate will not exceed 10% of the published terminal handling charges.

Analysis

(a). The complete details of the discussion the CCTL reported to have had with the users are not made available to this Authority. We do not have the benefit of the views of CCTL on the objection raised by SCI for the proposed incentive scheme. As rightly pointed out by CHPT, CCTL has not furnished the basis for the said scheme. Prima facie, this Authority is not in a position to endorse a scheme permitting unguided discretion to the CCTL to set the productivity benchmarks on case to case basis. It is necessary for this Authority to ensure that all similarly placed customers should be treated in a non-discriminatory manner. Though this Authority encourages the concept of

efficiency linked tariff arrangement, the datum for measuring efficiency should also be fixed upfront by this Authority.

- (b). The proposed new volume rebate scheme excludes coastal and transshipment volume; and, the users oppose the restriction of the scheme to mainline vessels. As brought out earlier, the CCTL has not responded to the comments of the users generally on the review application and particularly on the objections raised by CEPSAA on the proposed volume discount scheme. The financial implications of introducing the volume discount scheme have not been brought out by CCTL.

The performance linked incentive scheme and the volume rebate scheme are new proposals. Clause 3.3.1 of the revised tariff guidelines authorises this Authority to entertain review application for review of a tariff Order to the limited extent of errors apparent on the face of records considered in the relevant proceedings. A review route may not be taken to require this Authority to approve new proposals. Therefore, the CCTL is advised to come up separately with transparent and non-discriminatory proposals for efficiency linked tariff model with built-in penalty and reward scheme and volume discount scheme, if it so desires.

(viii). **Submission of Annual Accounts:**

Points made by CCTL in its review application with reference to paragraph No.15.4 of tariff Order of March 2007

It has been stated that CCTL is required to furnish to this Authority through CHPT its annual accounts and performance report within 60 days of closing of the respective accounting year. While there are no provisions requiring CCTL to submit audited accounts every year, CCTL is agreeable to submit the audited accounts for the respective financial year on completion of Audit. However, CCTL will furnish the accounts to TAMP directly and not through CHPT as the license agreement does not require CCTL to submit the annual accounts to CHPT. CHPT is conducting regular audits for revenue and investments, for which CCTL is giving them the required details along with the extracts of the relevant portions of audited accounts. Hence the conditionality of furnishing the accounts through CHPT as well as the time limit of 60 days for submission of accounts to TAMP may be removed and change it to submission of accounts as soon as the same is audited.

Analysis

Considering the position that CCTL as a private terminal operator can directly approach this Authority, this Authority is inclined to accede to the request of CCTL and deletes the words "through CHPT" contained in the last paragraph of the Order dated 28 March 2007.

However, acceding the *ibid* request of CCTL to directly submit its audited annual accounts to this Authority will in no way override the obligation(s) of CCTL towards CHPT under the License Agreement, in this regard.

(ix). **Efficiency gains:**

Points made by CCTL in its review application with reference to paragraph No. 14 (v)(e)(i)(b)] of tariff Order of March 2007

Each cost group has been separated into fixed and variable cost to demonstrate that the cost reduction has arisen on account of efficiency gains. Per unit cost reduction in variable cost is only due to improved efficiency of the terminal. The Authority is requested to consider the efficiency gain as per tariff guidelines while arriving at tariff for this tariff cycle, which was omitted in the earlier calculations.

{In the revised workings furnished by CCTL, it has made a claim of Rs. 68 per TEU (50% of Rs. 136/- per TEU) vis-à-vis its earlier claim of Rs. 64 per TEU}

The working furnished by CCTL to claim the efficiency gain of Rs. 68/- per TEU is summarized in the following table:

Sr. No.	Particulars	2002	2003	2004*	2005**
1	Traffic (TEUs)	395952	492777	599980	700107
2.	Variable Cost (Rs. in Lakhs)				
(a).	Contract Labour / Casual	125	149	122	134
(b).	Equipment Running Cost	525	850	735	993
(c).	Equipment hire	504	397	542	553
(d).	Equipment hire – ABG RTGs	357	406	-	-
3.	Total variable cost	1511	1802	1399	1680
4.	Per TEU Variable Cost	381	366	233	240
5.	Average cost per TEU	373		237	
6.	Total Efficiency gain per TEU	373 – 237 = Rs. 136 per TEU			
7.	CCTL Share of efficiency gain (50%)	Rs. 68/- TEU			

* 2004 variable cost is de-escalated by 5%.

** 2005 variable cost is de-escalated twice by 5% each.

Analysis

- (i). Clause 2.4.1 of the revised tariff guidelines stipulates that the benchmark for efficiency will be the actual cost reduction achieved due to efficiency improvement in the previous tariff cycle. 50% of such cost reduction has to be considered for estimating the relevant expenditure while fixing tariff for the succeeding tariff validity period.
- (ii). The earlier claim of CCTL for efficiency gain was based on average improvement made during the year 2004 and 2005 with reference to the year 2003. This approach was not found to be in line with the prescription contained in the revised tariff guidelines at clause 2.4.1. The said guideline requires a comparison to be made of the cost reduction achieved in the immediately preceding tariff cycle with that of the tariff cycle, which preceded it. Accordingly the CCTL has to compare the relevant items of cost incurred during the period 2004 and 2005 (covered by tariff Order dated 4 May 2004) with the corresponding relevant items of actual cost incurred during the period 2002 and 2003 (covered by tariff Order dated 6 March 2002) is required to be made.
- (iii). When the above-mentioned position was brought to its notice, the CCTL has worked out a cost reduction of Rs.136 per TEU and thus has revised its claim for its share of efficiency gain to Rs.68/- per TEU from Rs.64/- per TEU. The CCTL has identified four items of cost. The average of the aggregate of the cost for the years 2004 and 2005 and the average of the aggregate of the cost for the years 2002 and 2003 have been worked out and 50% of the difference between the average aggregate cost is claimed as Efficiency gain.
- (iv). While doing so, the CCTL has not accounted for the reduction reported to have been achieved in the estimation of individual items of relevant variable cost for the years 2007 to 2009. The illustration under Clause 2.4.1 of the tariff guidelines clarifies the methodology for estimation and accountal of efficiency gain in the future estimates.

- (v). The following cost items have been considered by the CCTL for computation of Efficiency gain:

- (a). Contract labour / casual labour cost
- (b). Equipment running cost
- (c). Equipment hire cost
- (d). Equipment hire – ABG RTGs

On an analysis of each of these items, the following position emerges:

- (a). Contract labour / casual labour cost:

The contract labour/ casual labour cost forms part of “Other Expenses”. The CCTL has confined the computation of efficiency gain to the contract/ casual labour cost. The items considered by CCTL under Contract/ Casual Labour Cost are as follows:

- (i). Labour charges for lashing
- (ii). CFS Labour
- (iii). Gate Survey Labour

The CCTL has reported an expenditure of Rs.125 lakhs and Rs.149 lakhs under these relevant heads for the years 2002 and 2003 respectively. Since, the breakup for these figures in terms of the above said three items of cost are not available in the earlier records, the position reported by CCTL is relied upon.

The per TEU contract labour/ casual labour cost may be relevant yardstick for measurement of cost reduction. The reduction in the per TEU cost during the years 2004 and 2005 as compared to the years 2002 and 2003 is shown in the following table:

Sr. No.	Particulars	2002	2003	2004	2005	2006
(i).	Traffic (in TEUs)	395952	492777	599980	700107	829307
(ii).	Contract/ Casual Labour cost (Rs. in Lakhs)	125	149	122*	134**	167***
(iii).	Per TEU cost (in Rs.)	31.57	30.24	20.33	19.14	20.16
(iv).	Average per TEU cost	30.90		19.74		20.16
(v)	Cost reduction per TEU (in Rs.) (Rs.30.90 – Rs.19.74)	-		11.16		-

* 2004 contract/ casual labour cost is de-escalated by 5% to bring it to the level of 2003.

** 2005 contract/ casual labour cost is de-escalated twice by 5% each to bring it to the level of 2003.

*** 2006 contract/ casual labour cost is de-escalated thrice by 5% each, to bring it to the level of 2003.

As can be seen from the above table, the average per TEU cost of Rs.30.90 relevant for the years 2002 and 2003 has come down to Rs.19.74 during 2004 and 2005. The per TEU cost at this level of Rs.19.74 has been more or less appears to have been maintained during the year 2006. Therefore, the claim of the operator towards efficiency in this item of expenditure is accepted. 50% of Rs.11.16 per TEU in the actual contract labour cost is factored in the relevant item of cost for the year 2006. Based on the adjusted contract labour cost for the year 2006, the estimates for the years 2007 to 2009 are recast.

(b). Equipment running cost:

The equipment running cost comprises of Power cost, fuel cost and repairs & maintenance cost. The CCTL has considered variable power cost and fuel cost in its computation. The position relating to power cost and fuel cost are discussed below:

Power Cost:

The CCTL has reported Rs.525 lakhs and Rs.850 lakhs for the years 2002 and 2003 respectively towards equipment running cost, which are the aggregate of variable power and fuel cost.

The variable power cost for the years 2002 and 2003 are Rs.231.72 lakhs and Rs.415.74 lakhs respectively. Considering a rate of Rs.5 per unit reported by CCTL earlier vide its letter dated 6 February 2004, the units consumed per TEU work out to 11.70 and 16.87 units respectively; and, the average is 14.29 units per TEU.

With reference to the years 2004 and 2005, the CCTL has earlier reported electricity consumption at 8.64 units and 7.38 units respectively. The average works out to 8.01 units as against 14.29 units for the year 2002 and 2003. Since there is reduction in electricity consumption per TEU, the claim of CCTL for efficiency in this regard is accepted. Unit electricity consumption of 7.38 units was maintained in the future estimates for the years 2007 to 2009 as considered in the Tariff Order of March 2007.

Fuel Cost:

The variable fuel cost for the years 2002 and 2003 are Rs.302.47 lakhs and Rs.434.01 lakhs respectively. Considering the unit rate of Rs.19.24 and Rs.19.95 per litre reported by CCTL earlier in its workings, the fuel consumed per TEU works out to 3.97 and 4.42 litres respectively; and, the average is 4.195 litres per TEU as against this, the average for 2004 & 2005 works out to 3.60 litres.

Comparing the average fuel consumption of 3.60 per TEU with the average consumption of 4.20 litres for the year 2002 and 2003, it appears that there is a reduction to the tune of 0.60 litres in the fuel consumption per TEU. That being so, the claim of CCTL for achievement of efficiency in this regard requires to be admitted. The per TEU fuel consumption of 3.70 units as reported by CCTL was considered by this Authority in the Order of March 2007. Therefore, the estimated fuel consumption cost considered in the Order of March 2007 is modified with reference to the base consumption of 3.90 litres.

(c). Equipment hire cost:

The variable equipment hire charges relate to hiring of Inter Terminal Vehicle (ITV). The CCTL has reported an amount of Rs.504 lakhs and Rs.397 lakhs for the years 2002 and 2003 respectively. The equipment hire formed part of "Other Expenses" in the Cost statement of the tariff Order of May 2004. The reported expenditure towards equipment hire was Rs.647.20 lakhs and Rs.453.94 lakhs. In the absence of details for the fixed and the variable component for the equipment hire charges included in Other Expenses, the position reported by CCTL is relied upon.

Considering a traffic of 395952 TEUs and 492777 TEUs for the years 2002 and 2003 respectively, the per TEU cost works out to Rs.127.29 and Rs.80.56 respectively and the average is Rs.103.93.

The reduction in the per TEU cost during the years 2004 and 2005 as compared to the years 2002 and 2003 is shown in the following table:

Sr. No.	Particulars	2002	2003	2004	2005	2006
(i).	Traffic (in TEUs)	395952	492777	599980	700107	829307
(ii).	ITV Variable Cost (Rs. in Lakhs)	504	397	541.48*	549.70**	632.81***
(iii).	Per TEU cost (in Rs.)	127.29	80.56	90.25	78.52	76.31
(iv).	Average per TEU cost	103.93		84.39		76.31
(v).	Cost reduction per TEU (in Rs.) (Rs.103.93– Rs.84.39)	-		19.54		-

* 2004 equipment hire is de-escalated by 5% to bring it to the level of 2003.

** 2005 equipment hire is de-escalated twice by 5% each to bring it to the level of 2003.

*** 2006 equipment hire is de-escalated thrice by 5% each, to bring it to the level of 2003.

As can be seen from the above table, the average per TEU cost of Rs.103.93 relevant for the years 2002 and 2003 has come down to the average level of Rs.84.39 during 2004 and 2005. The per TEU cost at this level of Rs.84.39 has reduced further to Rs.76.31 per TEU during the year 2006. That being so, the claim of CCTL in this regard, deserves to be admitted. 50% of Rs.19.54 per TEU is added to in the actual equipment hire charges for the year 2006. Based on the adjusted equipment hire charges for the year 2006, the estimates for the years 2007 to 2009 are recast.

(d). Equipment hire – ABG RTG's:

The CCTL has considered an amount of Rs.357 lakhs and Rs.406 lakhs for the years 2002 and 2003 in its computation of Efficiency gain. The workings or the basis for the said expenditure are not available in the records of this Authority. This item of cost has not been considered by CCTL for the subsequent two years 2004 and 2005. In view of the above, this item of cost does not appear to be relevant for calculation of efficiency.

(vi). As per the computation for efficiency gain furnished by the CCTL, the total efficiency gain works out to Rs.136 per TEU as shown in the first table given under the paragraph for efficiency gain. In that case, CCTL's share will be 50% of Rs.136, which is Rs.68 per TEU. For the estimated volume of traffic of 25,29,819 TEUs for the years 2007 to 2009, CCTL's 50% share works out to Rs.1720.27 lakhs.

On account of factoring in 50% of efficiency gain in the estimates of relevant items of expenditure for the years 2007 to 2009, benefit of Rs.1108.80 lakhs is estimated to accrue to the CCTL, after considering escalation factor. If the effect of escalation is ignored, the benefit accruing to CCTL will be Rs.1004 lakhs as against its claim of Rs.1720.27 lakhs. The difference of Rs.757 lakhs appears to arise on account of not considering the reported variable cost of Rs.357 lakhs and Rs.406 lakhs for the year 2002 and 2003 respectively towards the equipment hire charges for ABG RTGS for reasons explained in the paragraph (d) above and due to approximation and rounding off of the estimated benefit calculated by us.

11.1. In the light of the analysis given above, the estimated cost position for the years 2007 to 2009 is to be revised in respect of the following items:

(Rs. in lakhs)					
Sr.No	Particulars	2007	2008	2009	Total
1.(a).	Decrease in the operating income based on dollar denominated tariff on account of decrease in the Exchange rate to Rs.42/- per US\$.	(2.50)	(2.53)	(2.05)	(7.08)
(b).	Reduction of the operating income on account of reduction of the income from Bonded Trucking.	(32.76)	(34.40)	(36.12)	(103.28)
2.(a).	Increase in the Operating Expenses on account of allowing a higher rate of escalation factor of 5.40%	(51.11)	(63.39)	(95.57)	(210.07)
(b).	Decrease in the operating expenses due to revision of Exchange rate to Rs.42/- per US\$.	28.69	28.44	29.64	86.77
3.	Increase in Operating Expenses on account of factoring the 50% of the reduction in cost in the estimates (efficiency gain)	(372.58)	(397.24)	(338.99)	(1108.80)
4.	Decrease in the terminal value receivable by CCTL on account of exclusion of WDV of equipments and also on account of revision of the Exchange rate to Rs.42/- per US\$.	(110.70)	(124.28)	(139.44)	(374.42)
5.(a).	Increase in Return on account of allowing ROCE at a higher rate of 16%.	(417.07)	(387.09)	(379.10)	(1183.26)
(b).	Increase in Return on account of allowing Pre-payments as part of Working Capital.	(103.02)	(102.87)	(102.76)	(308.64)
		(1061.05)	(1083.36)	(1064.39)	(3208.80)

11.2. The cost statement of Order dated 28 March 2007 has been modified accordingly and the modified cost statement is attached as **Annex - I**. The result disclosed by cost statement is summarised as shown in the table given herein under:

SUMMARY OF THE RESULTS OF CCTL

Sr. No	Particulars	Operating Income (Rs. in crores)				Net Deficit(-) (Rs. in crores)				Net Deficit(-) as a % of operating Income		
		2007	2008	2009	Total	2007	2008	2009	Total	2007	2008	2009
1	CCTL as a whole	228.79	230.72	186.33	645.84	-6.28	-6.67	-34.04	-46.99	-2.75%	-2.89%	-18.27%

In its Order of March 2007, this Authority decided to maintain *status quo* in tariff levels for the years 2007 and 2008 and, if necessary, to consider any tariff adjustment for the year 2009 at a later stage for the reasons recorded.

In this exercise, the net deficit for the years 2007 and 2008 are taken into account for consideration. With respect to the year 2009, the incremental deficit of Rs.10.64 Crores is considered.

Since the earlier Order came into effect from middle May 2007, the deficit for the relevant period arising due to this review works out to Rs.2098.33 lakhs as shown below:

	(Rs. In Lakhs)
Deficit for the period from June 2007 to July 2008	755.88
Deficit for the period from August 2008 to December 2008	278.06
Incremental Deficit for the year 2009	1064.39

Deficit to be recovered by CCTL by an increase in tariff	2098.33
	=====

If this deficit is to be met by tariff increase, then the corresponding revenue share payable will go up. As partial pass through of revenue share is admissible in terms of the Government direction, the tariff increase should generate an estimated additional revenue of Rs.28.74 Crores.

This Authority finds it convenient to effect tariff increase prospectively as any retrospective revision may cause billing problems and hardship to users. In order to adjust the estimated additional revenue of Rs.28.74 Crores, it is necessary to increase the existing tariff by 10.17% with effect from 1 August 2008 till the end of the present tariff validity cycle i.e., 31 December 2009. It may be relevant to mention that though the CCTL had prayed for an interim increase of 7.5% in the tariff pending final disposal of its petition this Authority did not allow any such interim relief.

12.1. In the result, and for the reasons given above, and based on a collective application mind, this Authority decides to increase the existing tariff at CCTL by 10% with effect from 1 August 2008. The revised Scale of Rates of the CCTL is attached as **Annex – II**.

12.2. The words “through CHPT” after the word “Authority” and before the word “its” mentioned in the last paragraph 15.4 of Order dated 28 March 2007 is deleted.

12.3. The definition for “Bonded Trucking” prescribed at Section 1.20 is deleted and the subsequent Section is renumbered. Sections 4.8 and 4.9 of the Scale of Rates of CCTL governing the levy of Bonded Trucking Charges are deleted from the effective date of implementation of the earlier Order dated 28 March 2007.

(Brahm Dutt)
Chairman

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

F. No.TAMP/45/2007-CCTL - Proposal from the Chennai Container Terminal Limited for review of the tariff approved in March 2007.

1. Summary of comments received from the Chennai Port Trust, port users / representative bodies of port users are summarised below:

Chennai Port Trust (CHPT)

- (i). Points made by CCTL on “Return on capital Employed”, “Inflation”, “Efficiency Gains”, and “prepayments” are policy issues. CHPT has no comments to offer. TAMP has to decide.
- (ii). The Authority generally applies the US Dollar rate prevailing on a date prior to its approval. Therefore, the Authority’s action is in order.
- (iii). Regarding terminal value, Clause 13.06 (c) of the Concession Agreement provides that “In case of equipment with residual life of less than 5 years, the Licensor shall have the option either to take over such equipment without any compensation or cause the Licensee to remove such equipment”

The value of the equipments / assets to be taken over by CHPT can be estimated only at the time and hence the Authority may decide on the value furnished by CCTL.

- (iv). If CCTL’s contention for inclusion of Sundry Debtors in the working capital is accepted it will eventually lead to increase in Capital Employed, which in turn will enhance the ROCE thereby reducing the surplus. Therefore, the Authority may take a decision on this. Port has no remarks to offer.
- (v). Bonded Trucking comes within Section 42 of the MPT Act. Therefore, the Authority’s action in notifying the rates for Bonded Trucking is in order.
- (vi). Regarding Performance Linked Incentive scheme and volume rebates, CHPT is not agreeable for such blanket powers to CCTL without knowing the basis for such reward or penalty. Further as per concession agreement clause 5.02(a) any discounting or rebate shall not affect the royalty payable by licensee. Therefore, even if such discounts / rebates are offered by CCTL, the royalty payable will be on the gross earnings and not on the net charges after discount / rebates. In case of any penalty levied the same shall be taken for computing the royalty payable to CHPT.
- (vii). With reference to submission of Annual Accounts, it is stated that as per clause 3.08 A (i) g of the agreement, CCTL has to ensure production of necessary books and accounts for scrutiny and verification by the licensor. Hence, it is obligatory on the part of CCTL to furnish the Accounts to CHPT.
- (x). If there is adequate justification, the Authority may consider the request of CCTL for an interim increase in tariff by 7.5%

Madras Chamber of Commerce (MCCI)

- (i). The CCTL argument for revision on account of increased inflation, if met by the users, will also contribute to the same inflationary tendencies as the increased cost of service(s) of CCTL will ultimately add for escalation of inflation. This becomes a cycle.
- (ii). CCTL has claimed upward revision of rates in Dollar terms as Dollar has depreciated. MCCI does not have any record of CCTL ever asking for a downward revision whenever Dollar appreciated. The fluctuation of foreign exchange is a matter of occurrence in foreign trade. CCTL should now exercise its option where it would like to provide service on Rupee or Dollar rates and any decision in this case would be binding on all parties.
- (iii). The claim made by CCTL regarding their efficiency exercise on the service users is totally unacceptable. The entire trading community had to accept the revised procedures for accepting containers from offdock CFS out of necessity and compulsions beyond the users control,. This in itself has resulted in cost escalation of nearly Rs.2500/- to Rs.3000/- per container. MCCI agrees that CCTL is efficient. If CCTL is willing to give the delivery at the CCTL premises, the users need not bear transport and handling charges and will not mind accepting the revision provided by CCTL deliveries. There is no requirement of assessing the detailed working furnished by CCTL.
- (iv).
 - (a). On the terminal value, MCCI is not privy to the licence agreement of CHPT with CCTL. In any case, the CCTL has made the claim on the premise that the terminal value of all the equipments in use today are likely to reduce to zero by 2009.
 - (b). All the equipments whose terminal value is expected to be zero by 2009 are put to use by CCTL at its choice.
 - (c). Depreciation of the capital expenditure is allowed to enable any service provider to invest such amount. Thus, investments in capital equipment are routine. It is purely based on the judgment of the service provider. If the service provider is to be compensated, then, he must declare that no depreciation was claimed for tax relief.
 - (d). MCCI strongly feels that these clauses should be revisited and the trade must be protected from undue exploitation by a service provider.

The Chennai and Ennore Ports Steamer Agents Association (CEPSAA)

- (i). At present inflation rates are going down to as low as 4% - 4.5% and needs no further revision.
- (ii). It is not clear as to how the per TEU efficiency gain has been calculated at Rs.129/- per TEU. The computation needs further elaboration.
- (iii). Shipping lines are instructed to maintain advance monies towards likely expenses on prospective shipments. In such a scenario, the 12 day computation is not clear. CCTL's inability to provide bills immediately is its process fault and hence it cannot seek recourse to its accommodation.
- (iv). It is incorrect to restrict the volume rebates to mainline vessels only as CCTL earnings have no differential tariff pricing. Further the volumes tendered for

feeders far exceed the main line vessel volumes. The nature of business and volume ex Chennai are more towards the far and the Far East where the ports are serviced by the feeder operators. Neither the volumes nor the size of vessels in vogue can make a mainline vessel call for all these ports. Hence if the trade ex-Chennai needs to be competitive and grow in future, the services of the smaller feeder operators are a must. To deny them the due for a service well rendered is an unkind cut.

- (v). CCTL is unclear whether consortium partners would be considered as one single identity for providing the volume rebates. Moreover, 100,000 TEUs per calendar year = 8333 TEU per month = 2083 TEU per week excluding transshipment and coastal cargo is a very tall order for present mainline calls to achieve and is as good as denial of the rebate. With CCTL having all the windows tight there is no scope for increase in move counts for the operator to maximize on the rebate too.
- (vi). The CCTL has already achieved 1 million TEUs in 2007 (September 2007). The estimated traffic of 9,14,952 for the year 2007 evidences incorrect forecasting. Therefore, the entire premise of its present proposal is also incorrect.

If the 2008 and 2009 traffic were to show significant drop, which is highly unlikely, the asset deployment would also be rendered less. Hence, it defies logic as to how CCTL could seek increased depreciation in order to show reduced operating surplus.

- (vii). The workings furnished by CCTL for the efficiency gain is not clear. It is only reflective of the fact that the trade, which should have seen the efficiencies much earlier, has paid more to the terminal. This is in contrast to the popular belief that private sector would show efficient handling early than public investments.

It appears that CCTL has assumed that volumes have grown because of only its efficiency. All practices of off-dock movement and fast documentation at a price of the trade appear to have been ignored.

- (viii). Operating surplus for the year 2008 and 2009 is already on the positive. CCTL's move towards revision of rates appears to have additional operational profit early and without combating competition.
- (ix). At the present juncture, CCTL is constrained in their ability to handle more volumes due to lack of additional equipments, yard space. This attempt to obtain an increase is only an acknowledgement of their admission of having reached saturation levels and that the only measure of increasing their profitability is by enhanced tariff, which is totally unjustifiable. Hence the present tariffs be maintained and there is no justifiable urgency to provide an upward revision which would only increase transaction cost at a time when exporters are struggling against the rupee fall.

Shipping Corporation of India

- (i). If the facility of Bonded Trucking is included as per the provisions contained in Section 42 of Major Port Trusts Act 1962, the same facility should be positively provided by CCTL and de-notification of tariff does not arise. However, it is submitted that the Authority may look into the related aspects of cargo / container insurance for damages arising during inland haulage by Rail / Road etc.
- (ii). The entire operation of loading / discharging of containers is carried out by CCTL and the user does not come in the way as far as faster turn around / delay of the vessel is concerned. The aspect of imposing penalty on the THC charges does not arise and is totally unwarranted. On the other hand, if there is any delay due to non-operation of the vessel on account of failure/ break down of shore based facility, the berth hire charges pertaining to that period should be refunded by CCTL as the shore based operations are totally controlled by CCTL.
- (iii). The vessel operators should not be required to pay any reward for faster turnaround of the vessel, as the norms fixed as benchmarks for measuring/ judging faster turnaround will not only be subjective and can vary from season to season. Moreover, by improving the productivity, CCTL would be in a position to attract more vessels to its Terminal, as the ship owners may find it cost effective to bring vessels to CCTL, which in turn can create enhanced revenues to CCTL.
- (iv). While SCI welcomes the decision of volume rebate, the norms fixed for this should be done through the TAMP approval process. The qualifying volume considered for granting volume rebates is very high. Therefore, following points may be considered while drawing up a Volume rebate scheme:
 - (a). Volume rebate should be applicable to both mainline vessels as well as coastal vessels.
 - (b). Rebate should be applicable for the coastal boxes also.
 - (c). Volume considered for the qualification should be around 30,000 TEUs in a calendar year and can be increased by 5,000 TEUs every year after due consultation with / approval of the port users enabling all operators to obtain the benefits of the rebate and also for allowing them to upgrade their vessels.
 - (d). Details regarding the rebate given to each and every shipping line during the financial / calendar year should be published and the same should also be made aware to the users, trade, regulatory bodies etc.,
- (v). All the container lines presently operating in Chennai have already represented to CHPT to reduce the Berth Hire Charges or at least to be at par with the neighbouring ports like Sri Lanka, Singapore, Dubai etc., so as to make Chennai Port a truly international container terminal and also for attracting the remunerative transshipment container trade. Therefore, CCTL should drastically reduce their tariff and attract the transshipment traffic.

Indian National Shipowners Association (INSA)

Rates for coastal containers at CCTL will be increased by 33%. Status quo for coastal containers be maintained as the Government wants to develop the coastal shipping. An increase in the coastal rates as sought by CCTL will hamper the growth of coastal shipping.

2. A joint hearing on the case in reference was held on 28 January 2008 at the CHPT premises. During the joint hearing, the CCTL and some of the user organisations made the following submission:

Chennai Container Terminal Limited (CCTL)

- (i). We have filed a detailed review application bringing out the grounds for review of the earlier Order dated 28 March 2007. Please consider our submissions.
- (ii). Since the tariff order came into effect in the Financial Year 2007-08, the rate of return and escalation factor, as applicable for the Financial Year 2007-08, should be allowed in our case.
- (iii). Likewise, the foreign exchange rate prevailing at the time of implementation of the tariff order should be considered in the calculations.
- (iv). We admit that we could not give full details in support of our claim for efficiency gain in our original application. We have now furnished a detailed analysis. We are ready to explain our calculations to the concerned officials of TAMP.

Chennai Ennore Port Steamer Agents Association (CEPSAA)

- (v). There are frequent disruption of services and congestion in CCTL. The Lines do not get any benefit of the efficiency gain claimed by CCTL.
- (vi). The volumes at CCTL have considerably increased but this is not accompanied by any tariff reduction. Increased tariff burden should not be imposed on the trade. Infact, there is a case for reduction in tariff.

Container Shipping Lines Association (CSLA)

- (vii). We will send our written comments within a week.
- (viii). TAMP may consider the request of CCTL for revised rate of return, escalation and foreign exchange variation, as per its policy.
- (ix). No case is brought out by CCTL in support of its claim for efficiency gain.

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