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Tariff Authority for Major Ports

G No.153

New Delhi,

19 May 2014

NOTIFICATION

In exercise of the powers conferred by Sections 48, 49 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from the Cochin Port Trust for amendments to its existing Scale of Rates approved vide Order No.TAMP/49/2011-COPT dated 1 April 2013 as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/27/2013-COPT

Cochin Port Trust

- - -

Applicant

QUORUM:

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. C.B. Singh, Member (Economic)

ORDER

(Passed on this 21st day of February 2014)

This case relates to a proposal received from the Cochin Port Trust (COPT) for amendments to its existing Scale of Rates approved vide Order No.TAMP/49/2011-COPT dated 1 April 2013.

2. This Authority vide its Order No.TAMP/49/2011-COPT dated 1 April 2013 has approved the revised Scale of Rates of COPT. The said Order was notified in the Gazette of India on 10 June 2013 vide Gazette No.165.

3.1. The COPT vide its letter dated 1 August 2013 has proposed four amendments in the existing Scale of Rates. The amendments proposed by the COPT in its Scale of Rates are as follows:

- (i). Removal of Item no.6.11 – License fees for jetties, piers etc., from existing Scale of Rates:

- (a). Schedule 6.11 under Chapter VI (Miscellaneous Charges) prescribes license fee for jetties, piers, etc., as follows:

Sl. No.	Description	Unit	Rate in ₹
1.	Jetties and piers	Rate per unit per annum	1120
2.	Slipway	-do-	980
3.	Boatpen	-do-	469
4.	Inspection fees	Each Jetty/ slipway from each applicant	546

- (b). The COPT has proposed to delete the above mentioned schedule from the approved prevailing Scale of Rates on the ground that the items in the table do not form part of the services rendered by the port under Section 48 of the MPT Act, 1963. Licensing of Jetties, slipways and boat pen created by private parties are governed by Cochin Port Trust (Licensing of Jetties, slipways and boat pen) Regulations, 1968 under Rules and Regulations of Cochin Port Trust relating to traffic operations notified in the official Gazette as amended from time to time. Since such jetties and piers, slipways and boat pen belong to private parties, the port has proposed to delete these items from the Scale of Rates.

- (c). The other points stated by COPT in support of the removal of charges from the Scale of Rates are:

- (i). The assets are created/ constructed by the private parties and not by the port. These are concrete/ wooden structures extended to port waters, and each jetty & slipway are bearing separate numbers. The numbers of such assets using port's bed of backwaters are listed below:
 - Jetties & piers - 343 nos.
 - Slipway - 61 nos.
 - Boatpen - nil

- (ii). Inspection fees are being collected from the parties for new registrations of jetties/ piers/ slipways and also in the case of change of ownership.
- (iii). Port is conducting a quarterly physical checking of these assets to avoid misuse of port's bed of backwaters and to ensure the safety and security of smooth vessel movements in the channels.
- (iv). The revenue generated by the port from these items of charges is included in the 'Rent on Jetties' under the head 'Miscellaneous Income'. The income earned during the last 2 years is ₹62.83 lakhs and ₹64.76 lakhs for the years 2011-12 and 2012-13 respectively.
- (v). In the last General Tariff Revision proposal submitted by the port, the estimated income from these heads for the tariff setting period from 2012-13 to 2014-15 were included in the operating income of coal and other cargo of Form 5A(iii). Since this sub-activity shows huge deficit even after the estimates moderated by TAMP, it will not affect the cost statement if these charges were removed from the Scale of Rates.
- (vi). Further, no hike had been proposed for these charges in the last General Tariff Revision proposal.

(ii). Removal of Item No.2.2.4.(3) (Charges for hire of L&T Poclain & Barge Vijaya):

- (a). L&T Poclain (ED Nambiar) and Barge Vijaya were purchased and commissioned in the year 1980 and 1986 respectively. These floating crafts were purchased for the exclusive use of the port for dredging in shallow areas near the port workshop and dry dock, baggage jetty, etc., where other dredgers are not able to reach. The life span of the floating craft was 20 years.
- (b). The scope of the usage of these two crafts for non-port purposes within the port area is limited. Since both the floating craft have outlived its normal life span, there is no possibility to hire out these equipments to outside parties.

In this backdrop, the TAMP may permit the port to withdraw the rates for the services of L&T Poclain (ED Nambiar) and Barge Vijaya prescribed at Sl. No.3 in the Schedule 2.2.4-Charges for hire of floating craft of the prevailing Scale of Rates and convey the decision of TAMP in this regard early.

- (c). The COPT has made out following points for the removal of charges from the Scale of Rates:
 - (i). The equipments are mainly used for port's own purpose for basin dredging.
 - (ii). Since there is no spare capacity available, the equipments are not hired out to outside agencies. The equipments were out of function for the last 6 years due to major breakdown. Port had renovated the asset after spending money on major repairs. Since there is no demand for several years, the income generated and estimated is nil.

(iii). Proposal for additional footnote under the head “Schedule of Wharfage”:

- (a). The following information may be incorporated as note no.10 under the notes to 3.1 Schedule of wharfage for bulk and break bulk cargo, Chapter III of the approved Scale of Rates:

*“Charges on Wages plus Levy and Piece-rate Incentives for Supply of Cargo Handling Workers and Staff are **NIL**”.*

- (b). The COPT has made out the following point for the proposed incorporation in the Scale of Rates:

This is required for ensuring transparency in tariff especially wharfage, where COPT has received adverse publicity when its wharfage is compared with that of neighboring major ports which have lesser wharfage than the rate applicable at COPT. However, it is to be noted that the other major ports have a levy system for supply of port labor to the stevedore, which in the case of COPT is non-existent. In fact, wharfage at COPT is higher than that of other ports only because of absorption of the levy into wharfage.

(iv). Proposal to amend note 1 under the General Notes to Chapter-VII “Estate Rentals”:

- (a). The note no.(1) under General Notes to Chapter-VII Estate Rentals prescribed in the existing Scale of Rates is reproduced below:

“(1) All the base rates mentioned above are subject to an automatic annual escalation of 2%.”

- (b). It is proposed to replace the above note as follows for providing more clarity and transparency to the users:

“(1) All the base rates mentioned above are effective from 11.07.2010 and are subject to an automatic annual escalation of 2%”.

3.2. The port has requested to consider the above proposals and amend the existing Scale of Rates and issue necessary orders.

4. The COPT has subsequently vide its e-mail dated 6 August 2013 attached its letter No.FD/Costing/New SoR-2013/2013 dated 6 August 2013 requesting this Authority to consider its proposal for amendment in the General Note relating to Estate Rental proposed in its proposal dated 1 August 2013 in the Estate Orders notified by this Authority vide Gazette Nos.159 and 160 both dated 11 June 2010.

5. In accordance with the consultative procedure prescribed, the COPT proposal dated 1 August 2013 was forwarded to the India Gateway Terminal Private Limited (IGTPL) and concerned users/ user organisations seeking their comments. The comments received from the users were forwarded to COPT as feedback information. The COPT vide its letter dated 10 October 2013 has furnished its reply on comments of the users / user organisations.

6. Based on a preliminary scrutiny of the proposal, the COPT was requested vide our letter dated 18 October 2013 to furnish additional information/ clarifications. The COPT vide its letter dated 28 October 2013 has furnished its reply. A summary of the queries raised by us and reply furnished by COPT thereon are tabulated here below:

Sl. No.	Queries raised by us	Reply furnished by COPT
(A).	Removal of item no. 6.11-License fees for jetties, piers, etc. from the existing SOR. The tariff item relating to license fees for jetties, piers, boatpen, slipways and inspection charges is being proposed by the	

	COPT and approved by the Authority in the Scale of Rates (SOR) of the COPT since the inception of the Authority in the year 1997 and it is presumed that prior to inception of the Authority this rate was approved by the then Competent Authority i.e. Ministry of Road and Surface Transport. Since then the tariff item - License fees for jetties, piers, etc. is being proposed by COPT in each of the general revision proposal filed by the COPT and approved by the Authority as part of general revision proposal. The port has now in the current proposal proposed to delete schedule 6.11 relating to License fees for jetties, piers, etc. from the existing SOR. In this context, the following points may be clarified by the port:	
(i).	The port has in the first sentence of point 1. of the proposal stated that the items mentioned in the schedule 6.11 do not form part of the services rendered by the port under Section 48 of the Major Port Trusts Act 1963. The meaning of the said sentence is not clear. Please elucidate.	Private jetties extended into port area outside the shipping channels are only for private use and hence do not fall under the ambit of Section 48 of the MPT Act, 1963. These jetties do not themselves involve in shipping business and are constructed only to cater to the needs of personal boat owners of such jetties, leasing out such jetties for tying up boats belonging to other parties and hotels, etc., in connection with the tourism. This was initially included under the ambit of the competent authority as in those days moorings were in vogue and the barges involved in the cargo operations of vessels coming to the port of Cochin used to make use of these jetties and the adjacent godowns. Subsequently, owing to containerization and the change in the mode of transportation the concept of break bulk movement has all but come to an end and almost all such cargoes are now being transported in the containerized mode. Hence, these jetties do not cater to the need of transportation of cargoes meant for vessels calling at the port of Cochin any longer. Subsequently, many of the erstwhile owners of these jetties have also changed and the new owners have been using these jetties for tying up fishing boats, tourist boats, etc., which are not in the realm of cargo related activities. Hence, these activities as above do not fall under Section 48 of Major Port Trust Act, 1963.
(ii).	The port has stated that the jetties, piers, slipways and boatpen mentioned at Schedule 6.11 of the existing SOR are created by private parties and belong to	The issue of licence to such jetties is as per Section 123 of the Major Port Trust Act where the Board has the power to make rules for ensuring the safety of the

	them. If jetties, piers, slipways and boatpen are owned by private parties and are not owned by the port, then the rationale for issue of license by the port to the said facilities under Cochin Port Trust Licensing of Jetties, Slipway and Boatpen Regulations, 1968 may be explained. Also, please explain rationale for inclusion of this tariff item in the general revision of the SOR of the port while seeking approval from the competent authority from time to time which is in vogue even prior to the inception of Tariff Authority for Major Ports.	port. It is not desirable for the port to have different jetties with no licences issued in the name of the owner in view of the changed security scenario. Licensing of small jetties come with the condition that owners of such jetties will have to maintain a log detailing the names of boats calling at such jetties and checking on the identities of people disembarking. It is also the responsibility of the owners to inform the Police and other statutory authorities in case of any doubt. Pollution control on boats utilizing the jetties is also the responsibility of the owner of such jetties. COPT has already started the process of modifying the Traffic Regulations, pertaining to Cochin Port 1968 under which the following Rules/ Regulations will be relooked and changes incorporated. They are as follows: (a). The Cochin Port Trust (Licensing of Clerks, Importers, Shippers and Clearing & Forwarding Agents) Regulations, 1966. (b). The Cochin Port Trust Public Bonded Warehouse (Rent and other charges) Regulations, 1967. (c). The Cochin Port Trust (Licensing of Jetties Slipways and Boat pen) Regulations, 1968. (d). The Cochin Port Trust (Licensing of China Fishing Nets) Regulations, 1976. (e). The Cochin Port and Dock Regulations, 1975. (f). The Cochin Port (Issue of Stevedoring Licenses) Regulation, 1987. (g). The Cochin Port Trust (Handling Freight Containers Carrying Dangerous/ Hazardous Cargo) Regulation, 1987. (h). The Cochin Port Trust (Distrain or Arrest and Sale of Vessels) Regulation, 1988. (i). Major Ports (Regulations of Entry, Stay, Movement and Exit of Vessels) Rules, 1989.
(iii).	The COPT is requested to furnish a copy of the Cochin Port Trust Licensing of Jetties, Slipway and Boatpen Regulations, 1968 as amended from time to time. Also, highlight the relevant provision which, according to the port, is stated to govern the tariff arrangement to be followed by the port i.e. levy of license fee for licensing of Jetties, Piers, Slipways and Boatpen.	A copy of the Cochin Port Trust (Licensing of Jetties, Slipways and Boat pen) Regulation, 1968 is furnished for reference.
(iv).	If as proposed by the port Schedule 6.11 relating to License fees for jetties, piers, etc. are to be deleted from the existing SOR, then please clarify whether the port still proposes to continue to collect License fee for the jetties, piers, etc., owned by the private jetties after deletion of these	Port will continue to collect charges at the rates prescribed in the Cochin Port Trust (Licensing of Jetties, Slipways and Boat pen) Regulations 1968 as amended from time to time, as approved by the Board and notified in the Official Gazette.

	schedule. If so, please clarify the tariff authorisation and tariff setting arrangement under which the License fee is proposed to be collected by the port for the said facilities owned by private parties.	
(v).	Note 7 under Schedule 2.3.3. under Chapter-II Vessel Related Charge states the berth hire shall not be recovered from fishing vessels/ trawlers anchored at private jetties paying license fees under the Cochin Port Trust Licensing of Jetties Slipways and Boat pen Regulations 1968 as amended from time to time. In this context, please clarify the authority collecting these charges and also the tariff setting arrangement under which the so called berth hire charges are collected.	The port is collecting only the License Fee from the owner of the private jetties, slipways and boat pen. Fishing vessels/ trawlers berthed at such private facilities are paying charges to the owners of the facilities in respect of which the port has no say.
(vi).	Indicate the actual income earned by the port in the last three years say 2010-11 to 2012-13 from levy of the license fee prescribed in its SOR. The operating income and operating expense, if any, estimated for this tariff item by the port in the last general revision of the SOR which was approved by the Authority in Order number TAMP/49/ 2011-COPT dated 1 April 2013 for the years 2012-13 to 2014-15 may also be furnished.	The revenue generated by the port from these items of charges is included in the 'Rent on Jetties' under the head 'Miscellaneous Income'. The income earned during the last 3 years is ₹63.06 lakhs, ₹62.83 lakhs and ₹64.76 lakhs for the years 2010-11, 2011-12 and 2012-13 respectively. In the last General Tariff Revision proposal submitted by the port, the estimated income from these heads for the tariff setting period from 2012-13 to 2014-15 were included in the operating income of 'coal and other cargo' of Form 5A(iii) of cost statements. Since this sub-activity shows huge deficit even after the estimates moderated by TAMP, it will not affect the cost statement if these charges were removed from the SOR.
(B).	Removal of item no. 2.2.4. (3)- Charges for hire of L&T Poelain & Barge Vijaya	
	With reference to the proposal of the COPT to delete hire charges for L&T Poelain & Barge Vijaya from the existing SOR, the port may kindly take a note that there will not be any tariff setting arrangement available in its SOR if on any occasion due to exigency the port decides in future to hire L&T Poelain & Barge Vijaya to users.	This position is well taken note of.
(C).	Proposal for additional footnote no. 10 under notes to item no. 3 (1) - Schedule of Wharfage	
(i).	Please indicate the cost statement (both activity-wise and sub-activity wise) wherein the net deficit (i.e. operating income less expenses less ROCE) relating supply of cargo handling workers is captured in the last general revision of the port SOR.	The cost of supply of cargo handling workers is included in the cost statements under 'coal and other cargo' of Form 5A(iii) in the last general tariff revision proposal submitted by COPT.
(ii).	Also, indicate the relevant tariff item under which the net deficit relating to the supply of cargo handling workers is presently recovered.	The cost of supply of cargo handling workers is being recovered through wharfage on coal and other general cargo.

(iii).	If the port is of the view that the existing wharfage charges includes the cost relating to supply of cargo handling workers, then the COPT may examine whether the proposed note may be slightly modified as follows to bring in more clarity: "The wharfage rates prescribed in 3 (1) - Schedule for wharfage for bulk and break bulk cargo includes all the payments relating to supply of cargo handling workers and staff. Hence, no separate charges on wage plus levy and piece rate incentive for supply of cargo handling worker and staff will be collected."	The port agrees to the modification suggested by TAMP.
(D).	Proposal for amendments to the General Notes to Chapter VII – Estate Rentals	
	The Authority has passed an Order No.TAMP/30/2013-COPT dated 25 September 2013 addressing the amendment proposed by the port in the general note at Chapter VI. The said Order is being notified in the Gazette of India, the details of which will be informed to the port in due course.	Noted.

7. A joint hearing in this case was held on 29 October 2013 at the COPT premises. The COPT made a power point presentation of its proposal. At the joint hearing, the COPT and the concerned users/ organisation bodies have made their submissions.

8.1. At the joint hearing, the COPT has reiterated that the licensing of jetties, piers, boatpen does not fall under the services listed under section 48 of the Major Port Trust Act, 1963. The COPT has stated that the jetties, piers etc. constructed by the private parties will use the port's bed of water. In view of that the port was requested to examine whether licensing of jetties, pier, boatpen will come under the purview of section 49 of the Major Port Trust Act, 1963. The COPT was also requested to examine whether it will be in a position to collect license fee from private owners of jetties, slipways, boatpen statutorily if license fee for these items is deleted from its existing SOR.

8.2. In response, the COPT vide its letter dated 5 November 2013 has submitted the following:

- (i). Section 49 of the MPT Act, 1963 is reproduced below for reference:
49. Scale of rates and statement of conditions for use of property belonging to Board.

(1) ²[The Authority shall from time to time, by notification in the Official Gazette, also frame a scale of rates on payment of which, and a statement of conditions under which, any property belonging to, or in the possession or occupation of, the Board, or any place within the limits of the port or the port approaches may be used for the purposes specified hereunder:--]

(a) approaching or lying at or alongside any buoy, mooring, wharf, quay, pier, dock, land, building or place as aforesaid by vessels;

(b) entering upon or plying for hire at or on any wharf, quay, pier, dock, land, building, road, bridge or place as aforesaid by animals or vehicles carrying passengers or goods;

(c) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents;

(d) any other use of any land, building, works, vessels or appliances belonging to or provided by the Board.

(2) Different scales and conditions may be framed for different classes of goods and vessels.

³[(3) Notwithstanding anything contained in sub- section (1), the Board may, by auction or by inviting tenders, lease any land or shed belonging to it or in its possession or occupation at a rate higher than that provided under sub- section (1).]

- (ii). Jetties & piers, Slipways, Boat pen etc. are constructed by the private parties on the land owned by them but a portion of these structures are extended into port water area. Since the land used for construction of the above structures are owned by private parties none of the provisions of Section 49 of the MPT Act 1963 is applicable in these cases.
- (iii). Cochin Port Trust will continue to collect License fee for Jetties & Piers, Slipways and Boat pen from their owners as per the “Cochin Port Trust (Licensing of Jetties, Slipways & Boat pen) Regulation – 1968” framed under section 123 of the MPT Act 1963 and at the rates approved by the Board of Trustees and notified in the official Gazette from time to time.

9. 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>.

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

- (i). The proposal of the Cochin Port Trust (COPT) relates to four amendments to its existing Scale of Rates (SOR) approved vide Order No.TAMP/49/2011-COPT dated 1 April 2013. Of the four amendments proposed by the COPT, one of the amendments relates to amending the General Note no. (1) to Chapter VII–Estate Rentals in the SOR of COPT approved in the Order dated 1 April 2013. In the said amendment, the COPT proposed to specify the effective date of implementation of estate rentals explicitly as 11 July 2013 to avoid any ambiguity.

It is relevant here to state that the COPT had vide its another letter dated 6 August 2013 filed a separate proposal for the same amendment. It is to be noted here that this proposal of COPT was processed separately with reference to lease rental Order approved by this Authority vide Order No.TAMP/33/2007-COPT dated 4 May 2010 and this Authority has already passed an Order No.TAMP/30/2013-COPT dated 25 September 2013 disposing of the proposal of COPT dated 6 August 2013 and amending the General Note No. (1) to Chapter VII–Estate Rentals incorporating the effective date of implementation of the base rate of estate rental as 11 July 2010 as proposed by the COPT to remove the ambiguity in the existing SOR. The said amendment proposed by COPT already stands disposed in the separate proposal filed by the COPT, and hence is treated as disposed of here.

- (ii). Before proceeding ahead with analysis of the remaining three amendments proposed by the COPT, it is seen that the comments furnished by some of the user associations viz., Cochin Port Leaseholders' Association (CPLA), Cochin Chamber of Commerce and Industry (CCCI) and Cochin Steamer Agent's Association (CSAA) are not relevant to the current proposal of COPT. This position is also endorsed by the COPT.

(iii). Remaining three amendments proposed by the COPT is analysed hereinunder in seriatim:

(a). Removal of Item no.6.11 – License fees for jetties, piers etc. from existing Scale of Rates:

- (i). As brought out in the earlier paragraphs, the prescription of license fees for jetties, pier, boatpen, slipways and inspection charges in the SOR of the COPT is in vogue since the inception of this Authority in the year 1997 based on the proposal of COPT. In fact, tariff for this item had been prescribed in its SOR even prior to inception of this Authority based on the approval granted by the then Competent Authority. The COPT has also admitted this position.
- (ii). The COPT has now proposed to delete the schedule relating to license fee for jetties, pier, etc., prescribed in Schedule 6.11 in Chapter VI–Miscellaneous Charges of the existing SOR. The COPT has categorically stated that the activities that are taking place at the private facilities do not fall under Section 48 of the Major Port Trusts (MPT) Act, 1963, thereby implying that the COPT does not provide services listed under Section 48 of the MPT Act to the private facilities. This position is relied upon.
- (iii). When advised to examine whether licensing of jetties, piers, boatpen, will come under the purview of Section 49 of the Major Port Trusts Act, 1963, the COPT has contended that these jetties, piers, slipways, boatpen, etc., are constructed by the private parties on the land owned by them. The port has further contended that since the land used for construction of these structures are owned by private parties none of the provisions of Section 49 of the said Major Port Trusts Act are applicable in their cases and hence sought deletion of this Schedule. But, a portion of these structures extend into port waters is a point to be reckoned with.
- (iv). The mandate given to this Authority to determine Scale of Rates and prescribe statement of conditions for Major Port Trusts and Private Terminals operating therein flows from Sections 49 and 50 of the Major Port Trusts Act, 1963, apart from Section 48.
- (v). As per the provisions of Section 49(1) of the Major Port Trusts Act 1963, this Authority is mandated to frame a Scale of Rates and Statement of Conditions for any property belonging to the Board, or in the possession of the Board or occupation of the Board or any place within the limits of the port or port approaches may be used for the purposes specified therein. One of the purposes specified in Section 49(1)(a) is for approaching, lying at or along side any buoy, mooring, wharf, pier, quay, dock, land, building or place as aforesaid by vessels.

In the instant case, the COPT has reported that the jetties, pier, boatpen do not belong to the COPT nor are they in the possession of the port nor occupation of the Board. At the same time, the COPT has admitted that these jetties, pier, etc., belonging to the private parties are occupying/ using port's bed of backwaters in its proposal dated 1 August 2013 which is reiterated by the port in its subsequent letter dated 5 November 2013. It is relevant to state here that the extended part of the jetties (though owned by private parties) occupy port waters. It is

noteworthy that the assets of the private parties use port's bed of backwaters. Thus, in short, though the private facilities may be on the land area owned by private parties, the fact is that the extended part of the jetties/ piers owned by private parties occupy and utilize the port waters and hence their facility is not totally delinked from the port facilities. Therefore, licensing of these facilities fall under Section 49 of the MPT Act, 1963.

- (vi). Whilst the port has sought deletion of this schedule from the existing Scale of Rates on the one side, it proposes to continue to exercise control over these private facilities and also collect license fee from the private parties. The COPT has submitted that it will collect the fee based on the rates approved by its Board under Cochin Port Trust (Licensing of Jetties, Slipways & Boat pen) Regulation – 1968 and notified in the official Gazette from time to time. The COPT has stated that as per Section 123 of the Major Port Trust Act, 1963, the Board of the port has the power to make rules for ensuring the safety of the port and it is as per these provisions, in the Major Port Trusts Act, the COPT has framed relevant regulations and license is issued to private jetties/ piers.

In this context, it is relevant here to mention that Section 123 of the Major Port Trust Act, 1963 authorizes the port to frame regulations consistent with the Act for a couple of purposes enumerated in the said section and one of the purposes mentioned in the said section at sr. no. (f) is for safe, efficient and convenient use, management and control of the docks, jetties, etc. Section 123 of the Major Port Trusts Act does not envisage any tariff setting arrangement or authorize the Major Port Trusts to determine tariff and levy such tariff without seeking approval of the Competent Authority. Even if a rate is approved by the Board of Trustees of the port under regulations framed u/s Section 123 of the Major Port Trusts Act, statute requires the Major Port Trust to seek approval of this Authority to levy such tariff. Levy of any tariff by Major Port Trust without approval of this Authority will not be in line with the tariff setting arrangement envisaged in the statute.

- (vii). In the instant case even though the COPT proposes to delete schedule 6.11 from its existing Scale of Rates, it intends to continue to exercise control over these private jetties by issue of license for ensuring safety of the port and for the same purposes intends to collect a fee. Till such time the activities that are taking place in the private facilities are under the overall control and supervision of the COPT and such private structures also occupy (even a part) the port facility and port intends to collect license fee such fee has to be available in the SOR of the concerned port approved by this Authority thereby authorizing the port to collect such a levy. It is also relevant here to mention that the license fee for use of port properties by private service provider has been prescribed by this Authority in the Scale of Rates of various other Major Port Trusts like Mumbai Port Trust, Chennai Port Trust, Visakhapatnam Port Trust, and Jawaharlal Nehru Port Trust, apart from Cochin Port Trust.

As long as the facility created by private parties continue to occupy port area, it will continue to fall under the tariff regime of this Authority.

- (viii). In view of the reasons explained in the preceding paragraphs, the proposal of the COPT for deletion of the Schedule 6.11 from the existing SOR is rejected.
- (ix). Reportedly, COPT is in the process of reviewing the Cochin Port Trust (Licensing of Jetties, Slipways & Boat pen) Regulation – 1968 framed under section 123 of the Major Port Trust Act. If the regulations under review by the port contain any tariff arrangement, then the COPT at the time of seeking the approval of such regulations from the Central Government as required by Sub-Section (1) of Section 124 of the MPT Act, 1963 is advised to bring to the attention of the Government that such tariff arrangement will have to be approved and incorporated in the Scale of Rates of COPT to operationalize the tariff arrangement and notified by this Authority as required under Sections 48, 49 and 50 (c) of the MPT Act.
- (b). Removal of Item No.2.2.4.(3) Charges for hire of L&T Poclain & Barge Vijaya:

L&T Poclain and Barge Vijaya purchased and commissioned in the year 1980 and 1986 respectively are for exclusive use of the port. These two equipment have outlived their normal life span of 20 years and there is no possibility to hire out these equipment to outside parties. Moreover, there is no spare capacity available to hire out these equipment to outside agencies. Reportedly, there is no demand also for these equipment for several years and no income is generated from these assets.

Since continuance of this tariff item in the existing Scale of Rates of COPT is superfluous in view of the reasons cited above, the proposal of the COPT to delete the hire charges for L&T Poclain and Barge Vijaya prescribed in serial no. 3 under Schedule 2.2.4. is accepted.

Incidentally, the port has also noted that upon deletion of the hire charges of these assets there will not be any tariff available in its SOR, if on any occasion due to exigency, the port decides in future to hire out L&T Poclain & Barge Vijaya to users.

- (c). Proposal for introducing a footnote under the Schedule of Wharfage:
- (i). The COPT has stated that the charges for supply of port labour for stevedoring activities in other ports is not included in their wharfage charges whereas in case of COPT wharfage charge prescribed in its Scale of Rates is inclusive of labour charge for stevedoring activities. Therefore, the port receives adverse publicity when its wharfage charges are compared to the wharfage charges of other ports. The COPT has, therefore, proposed to introduce note no. 10 below the notes under 3.1. Schedule of wharfage for bulk and break bulk cargo to clarify the position that wharfage charges at the COPT are higher than other ports only because of absorption of the levy for supply of cargo handling labour into its wharfage rate.
- (ii). The port has clarified that proposed note is only a clarification that wharfage at COPT is an all-inclusive rate and the port has confirmed that there is no impact on the existing wharfage rate prescribed in the SOR of the port. The port has also agreed for slight modification suggested by us elaborating the proposed note to explicitly state that the wharfage rates prescribed in 3.1 Schedule for wharfage for bulk and break bulk cargo includes all

the payments relating to supply of cargo handling workers and staff. Hence, no separate charges on wage plus levy and piece rate incentive for supply of cargo handling worker and staff will be collected.

- (iii). Since the proposal to insert the proposed note is of clarificatory nature only and also considering the fact that none of the users consulted in the proceeding have raised any objection to the proposed note, this Authority is inclined to insert the clarificatory note proposed by the COPT as note no.10 subject to elaboration in the proposed note suggested by us and agreed by the COPT.

10.2. Ordinarily, the Orders approved by this Authority are implemented after expiry of 30 days from the date of notification of the Order in the Gazette. Since amendments approved in the instant case are for deletion or clarificatory purpose, the amendments are made effective from the date of its notification in the Gazette.

11.1. In the result, and for the reasons given above, and based on collective application of mind, this Authority rejects the proposal to delete Schedule 6.11 License fees for jetties, piers etc., under Chapter VI Miscellaneous Charges from the existing SOR and approves the following:

- (i). Deletion of entry at sr. no. 3 under Schedule 2.2.4.– Charges for hire of floating craft under Chapter II – Vessel Related Charges in the existing Scale of Rates of COPT. Consequent to deletion of sr. no.3, the existing sr. no.4 and 5 under this schedule is renumbered as sr. no.3 and 4 respectively.
- (ii). Insert the following note as note no. 10 under 3.1. Schedule of wharfage for bulk and break bulk cargo in Chapter III – Cargo Related Charges of the existing SOR of the COPT:

“10. The wharfage rates prescribed in 3.1 - Schedule for wharfage for bulk and break bulk cargo includes all the payments relating to supply of cargo handling workers and staff. Hence, no separate charges on wage plus levy and piece rate incentive for supply of cargo handling worker and staff will be collected.”

11.2. The COPT is directed to amend its Scale of Rates accordingly.

(T.S. Balasubramanian)
Member (Finance)

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

F. No.TAMP/27/2013 - COPT - Proposal from the Cochin Port Trust for amendments to its existing Scale of Rates approved vide Order No.TAMP/49/2011-COPT dated 1 April 2013.

A summary of the comments received from the users / user organisations and reply of Cochin Port Trust (COPT) thereon are tabulated below:

Sl. No.	Comments of the users / user organisations	Reply of COPT
1.	The Cochin Port Leaseholders' Association (CPLA), Cochin Chamber of Commerce and Industry (CCCI) and Cochin Steamer Agent's Association (CSAA)	
(i).	With the development of ICTT, the core businesses of the Cochin Port has been shifted out from Willingdon Island to Vallarpadam. As a result many companies on the Island have started to relocate to places near the ICTT. This has created vacant spaces on the island including large areas like the container yards which are remaining unoccupied for almost a year now. Railway tracks which were earlier used to transport containers are also being removed. Moreover it has been observed that over the period of time the businesses in general is diminishing on the Island.	The comments of these users have been examined vis-à-vis COPT proposal dated 1 and 6 August 2013 and noticed that they are identical in all aspects and are not related to COPT proposal for amendments. A meeting was arranged with these users which was attended by the representatives of CPLA and CCCI. In the meeting, the representatives stated that they have no objections to the amendments proposed to the Scale of Rates.
(ii).	The Port's decision to renew the expired leases upto 31.12.2012 with regard to several leaseholders and thereafter periodically for three months at a time has increased the uncertainty among the leaseholders on the Island. Due to this, Companies are leaving the Island and this has seriously affected the business activities here. This trend will bring down the revenue of the Port Trust.	
(iii).	The Port needs to utilise the existing resources and infrastructure on the Island rather than demolish it. The annual revenue raised through lease/ sublease rents amount to over ₹80 crores which is a substantial contribution to support the Port which is already facing a financial crisis.	
(iv).	Another important aspect is that the Port has been floating tenders for providing land and buildings which have been taken over by them on license for 11 month period, but there have been very few bidders for certain plots/ buildings. This itself shows that due to the high lease rents there is no longer any demand for land on the Willingdon Island and therefore the Port's decision to hike the lease rents cannot be justified. Moreover, the overall demand for land across the country has come down drastically (please refer to the Economic Times column dated 2 September 2013 enclosed).	
(v).	Rather than evicting all the present lease holders and demolishing built up areas, the Port must devise projects that will blend in with the current geographical alignment of Willingdon Island. The Port's current proposal would, by conservative estimates, mean that a large number of businesses -	

	more than 150 Companies with approx. 12,000 (part time and full time) employees will be dislocated with a loss of employment to thousands of people, and have an adverse effect on the local economy as well as that of the State of Kerala as a whole.	
(vi).	The Port has reduced the lock in period of 10 years to 5 years. This should be for the original period of 10 years. The current escalation at 2% per annum should be dropped. The lease rent at ₹1,63,602.00 per acre per annum for the leases existing prior to 1996 should be maintained instead of the revised rate effective from 11.7.2010 at ₹3,27,204.00 per acre per annum.	
(vii).	The rate per acre per annum on the date of commencement of the original lease was ₹2,400/- per acre per annum. The increase as per the original lease deed should have been as follows: 1958 - ₹2,400.00 per acre per annum 1968 - ₹4,800.00 per acre per annum 1978 - ₹9,600.00 per acre per annum 1988 - ₹19,200.00 per acre per annum	
(viii).	The Port Trust increased the lease rents before the renewal of the lease deeds to ₹35,175.00, at 56% to ₹54,873.00 per acre per annum and by 100.1% to ₹1,09,800.00 per acre with 5% escalation per annum. The lease rent had increased by ₹1,07,400.00 per acre per annum on the base rent of ₹2,400.00 per acre per annum which is 4,575% over a period of 38 years and the percentage of increase per annum is 120.39% which should in no case exceed 100% per annum over a period of 10 years. The increase should have been only 380% on the base rent.	
(ix).	The rate of increase from ₹54,873.00 to ₹1,63,602.00 is ₹1,08,729.00 per acre per annum which is 298.15%.	
(x).	The Port is already beleaguered with its financial crisis. The major contributors to this are Dredging Costs and Salaries/Pension to Port employees. With the establishment of the ICTT at Vallarpadam and the activities having been taken over by DP World, many of the Port employees do not have sufficient work. It is high time that the Port adopt measures to reduce its employee cost. This will save considerable revenues for the Port Trust. We would also suggest that TAMP to look into the costs incurred by the Port for dredging and also the possibility of sharing the cost with Navy and Shipyard as the channels are also being used by them.	
(xi).	A comparison done on a recent allotment of land on Bolgatty Island by COPT to EMKE Group (Lulu). It has been calculated that COPT is receiving a revenue of only ₹71.37 crores for the leased out area of 10.59 Hectares at Bolgatty for a period of 30 years whereas leaseholders on the Willingdon Island are contributing around ₹2,040 crores for the space they occupy for the said period. This would imply that at present the annual rent per hectare on the Willingdon Island is ₹88 lakhs where as in Bolgatty it comes only to ₹22.46 lakhs. It may be	

	noted that Bolgatty Island is an area which is relatively nearer and better connected than Willingdon Island. Hence ideally the land rent on Willingdon Island needs to be lesser than that of Bolgatty.	
(xii).	It has been noted that Cochin Port is the only Port in the country which charges sub lease levy on the leaseholders. We would like to reiterate the fact that the subleasing activity is being carried out as per the Land Use Policy approved by the Shipping Ministry. At a time when other major ports of the country are not charging sub lease levy, this practice by the Cochin Port is imposing an additional burden on the leaseholders, who have been instrumental for the Port's development over these years.	
(xiii).	Hence CSAA would like to conclude that the increase in lease rents which have been effected by the Cochin Port Trust is high and the leaseholders are now put to severe financial difficulties. Hence we would like to have the leases renewed for a period of 30 years. It is high time the COPT recognise the Lease holders as Stakeholders and they should also be consulted before framing Port's strategy for development. We therefore would request you to kindly consider the above mentioned aspects and grant us an opportunity to attend the joint hearing in order to resolve the pending issues of the leaseholders.	
2.	Western Marine Engineering	
	We have gone through the Corrigendum and have nil comments to offer.	--
3.	Indian Coast Guard	
	No comments to offer.	--
4.	Cochin Shipyard Ltd. (CSL)	
(i).	Cochin Shipyard Ltd. took over 8.12 acres of land and 15 acres of water area with all facilities and fixtures existing therein on lease basis from COPT in accordance vide a general agreement dated 24 December 2012 and lease agreement dated 12 April 2013. This being the position, CSL has no special comment on subject except that CSL is not liable to pay lease rent in respect the land categorized as "Landing cone of Naval airport" under Chapter VII of Scale of Rates, Cochin Port Trust as appearing in Annexure II of TAMP Notification dated 10 June 2013.	No comments furnished by the port.
5.	Bharat Petroleum Corporation Limited	
	No comments to offer.	--
6.	Sea Blue Shipyard Ltd.	
	COPT has proposed for removal of license fee for jetties, slipways etc. This is a welcome suggestion put forward by COPT which will be appreciated by all concerned in the industry. It has pointed out that those who are having more jetties and slipways will have to pay huge amount for renewal of the license fees. In our case, we are having 7 jetties and 7 slip ways and our annual liability on this account alone is a large amount. Though we are paying for all the facilities, we may be able to utilize only a very few of the jetties and	

	slip ways. Hence, if the recommendation of COPT is accepted by TAMP, it will be helpful for an upcoming company like Sea Blue.	
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2. A joint hearing in this case was held on 29 October 2013 at the COPT premises. The COPT made a power point presentation of its proposal. At the joint hearing, the COPT and the concerned users/ organisation bodies have made the following submissions:

Cochin Port Trust (COPT)

- (i). Makes a brief power point presentation of its proposal. Hard copy is given.

1st Amendment:

- (ii). Section 123 of the Major Port Trusts Act, 1963 empowers Board of the Port Trust to frame rules for ensuring safety of the port.
- (iii). Licensing of jetties, pier and boatpen constructed by private parties are governed by Cochin Port Trust Licensing of Jetties, Slipways and Boatpen Regulations, 1968 framed by the port under Section 123 of the Major Port Trusts Act, 1963 and are notified in the Gazette from time to time.
- (iv). These assets are owned by private parties.
- (v). We have 343 jetties and 61 slipways.
- (vi). Licensing to jetties, pier and boat pen to private parties is with a condition that the owner of such assets has to maintain log details of boats calling their jetties, pier, boat pen, verify identity of passengers embarking/ disembarking and inform competent authorities in case of doubt.
- (vii). This is only a licensing activity governed by Licensing of Jetties, Pier, Boatpen Regulations framed by Cochin Port Trust. It does not fall under section 48 of the Major Port Trusts Act, 1963 and hence may be deleted from existing Scale of Rates.

License is given by the COPT following the Regulations framed by the Cochin Port Trust. Licensing to these private parties is mainly to deal with safety and security aspect of the port. It does not come under the services listed under section 48 of the Major Port Trusts Act. Hence, port has proposed to delete this tariff item.

2nd Amendment:

- (viii). L&T Poclain and Barge Vijaya were acquired in 1980 and 1986 respectively. These assets have outlived and completed their useful life span of 20 years.
- (ix). Presently, they are utilized by the port for dredging at shallow areas of the port workshop, dry dock, baggage jetty, etc. It is used entirely for the port activity.
- (x). There is no scope to hire these equipment to outside parties. Hence, the proposal is to delete tariff of these items from the existing Scale of Rates.

3rd Amendment:

- (xi). The third amendment is only a clarificatory note on the wharfage rate.
- (xii). TAMP has suggested some modification in the note proposed. We endorse the suggestion made by TAMP.

Cochin Steamer Agents Association

- (i). Will the amendment proposed result in any increase in wharfage rate?

[Chairman, COPT: The proposed note is only a clarification that wharfage at COPT is an all-inclusive rate. There is no impact on the existing wharfage rate.]
