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Tariff Authority for Major Ports

G No. 158

New Delhi, 4 July 2012

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 seeking approval of charges for providing pre-processing facility to EXIM Containers at Q7 area as in the Order appended hereto.

(Rani Jadhav)
Chairperson

Tariff Authority for Major Ports
Case No. TAMP/21/2011-COPT

Cochin Port Trust

Applicant

ORDER

(Passed on this 18th day of June 2012)

This case relates to the proposal dated 4 April 2011 received from the Cochin Port Trust (COPT) seeking approval of charges for providing pre-processing facility to EXIM Containers at Q-7 area.

2.1. The main points made by the COPT in its proposal are summarized below:

- (i). India Gateway Terminal Private Limited was operating a pre-stage examination zone outside the RGCT premises. The container handling operations have been shifted from RGCT to ICTT with effect from 11/02/2011 and COPT has commenced the pre-stage operations inside the Port at Q7 area with effect from 21/02/2011 due to an urgent necessity for continuing the facility for ensuring smooth movement of EXIM containers to/from ICTT.
- (ii). However there are no TAMP approved rates applicable for the said operations at Q7 area.
- (iii). (a). The following rates have been proposed on ad-hoc basis and the consent for the same has been obtained from the port users.

- (i). Charges for examination of import & Export container for clearance:

20'	40'	45'
₹ 400		

- (ii). Lift on /Lift off charges for containers:

Type	Foreign (in ₹)			Coastal (in ₹)		
	20'	40'	45'	20'	40'	45'
Laden	570.24	855.36	1140.48	342.14	513.22	684.29
Empty	178.20	267.30	356.40	106.92	160.38	213.84

- (iii). Reefer charges for containers –

Electricity supply and monitoring charges per 4 hours or part thereof.

Foreign (US \$)			Coastal (₹)		
20'	40'	45'	20'	40'	45'
3.18	4.76	6.35	138.40	207.58	276.80

- (iv). Ground Rent on Containers:

Ground Rent will be levied for containers availing storage from the day following the date of grounding at the rates prescribed at 5.1.2 of the Port Scale of Rates without adopting the free period prescribed therein. (The COPT has furnished relevant pages of its SOR.)

(b). The COPT has furnished a copy of minutes of the meeting held on 28 February 2011 with the Customs Clearing House Agents' Association (CCHAA). The decisions taken in the said meeting are summarised below:

- (i). The rates charged by the IGTPPL varied from ₹350/- to ₹600/- depending on the size of container and the timing of processing. In order to make the service of customs examination more user friendly, it was decided in the meeting to lower the rate to ₹400/- per container irrespective of the size and timing.
- (ii). COPT will also facilitate the lift on / lift off facility by arranging reach stacker service. The rate charged by the IGTPPL at RGCT will be continued by the COPT for the said service.
- (iii). The Trade highlighted the requirement of reefer storage facility at the RGCT yard in addition to the facility available at ICTT. COPT agreed to resume the reefer storage operations at its Q7 yard. The rates previously charged by the IGTPPL will be continued by COPT for rendering the service.
- (iv). The containers grounded for availing storage will be charged ground rent from the day following the date of grounding at the rates prescribed in the at Section 5.1.2 of the Scale of Rates of COPT without adopting the free period prescribed therein.

The CCHAA has agreed to the above decisions taken in the meeting. The CCHAA also highlighted the need for a low cost pre-processing facility to control the gross system cost for container handling through ICTT.

- (iv). The ad-hoc rates for lift on and lift off and reefer charges proposed at (b) & (c) above are at par with the rates charged by IGTPPL for the same services at RGCT for the last couple of years, while the rate at (a) is an average of the charges levied by IGTPPL outside the RGCT.
- (v). The COPT has issued a circular dated 4 April 2011 to the Trade conveying the implementation of the proposed rates with effect from 21 February 2011, the date of commencement of the pre-processing facilities on ad hoc basis subject to approval of this Authority.

2.2. The COPT has requested this Authority to approve the rates on adhoc basis and agreed to submit a detailed proposal for the pre-stage activity at Q7 area on 'cost plus' basis along with the proposal for general revision of tariff which is due from 1 April 2012. (Subsequently, the COPT has filed the proposal for general revision of its Scale of Rates in September 2011. It has included the proposed charges for pre-processing facility, as brought out above, in the proposed Scale of Rates furnished along with the general revision proposal).

3. The adhoc rate proposed by COPT for examination of containers mentioned at Sl. No.iii (a) (i) above is an average of the charges levied by IGTPPL outside the RGCT as stated by COPT. The adhoc rates proposed by COPT for lift on / lift off services and reefer monitoring services mentioned at Sl. No.iii a(ii) & (iii) above respectively are in agreement with the rates approved by the Authority for IGTPPL for its RGCT operations.

4. In accordance with the consultative procedure prescribed, the proposal of COPT was forwarded to the user/ user organisations seeking their comments. The comments received from users/ user organisations were forwarded to COPT as feedback information. The COPT has also furnished its remarks on the comments of the users/ user organizations.

5. A joint hearing in this case was held on 28 March 2012 at the Cochin Port Trust (COPT) premises. The COPT made a power point presentation of its proposal. At the joint hearing, COPT and the concerned users/user associations have made their submissions.

6. 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>.

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

- (i). Consequent to the shifting of container operations by IGTPPL from RGCT to ICTT from 11 February 2011, the COPT is providing pre-stage services to the EXIM containers to/from ICTT, inside the port at Q7 area, in the absence of facilities at ICTT, Vallarpadam. The COPT has proposed to recover charges for the pre-stage services, viz. (i) examination of import / export containers, (ii) lift on/lift off of containers (iii) electricity supply and reefer monitoring charges and (iv) ground rent. The existing Scale of Rates (SoR) of COPT does not prescribe tariff for these services except for levy of ground rent. Clause 2.17.1 of the tariff guidelines of 2005 provides that whenever a specific tariff for a service / cargo is not available in the notified SoR, the port operator can submit a suitable proposal.
- (ii). The COPT has proposed the charges on ad hoc basis stating that a cost based proposal would be submitted along with its proposal for general revision of SoR, which is due from 1 April 2012. It is relevant here to mention that the COPT has included the rates for these services in the proposed SoR furnished by it along with the proposal for general revision of its SoR. The proposal of COPT for general revision of its SoR is under the proceedings of this Authority. As it may take some more time for finalization of the general revision proposal and notification of the revised SoR, in view of the extension of time for submission of requisite details / clarifications sought by COPT, the proposal for approval of ad hoc rates is taken up for consideration.
- (iii). The rates proposed by the COPT for two tariff items, viz. lift on / lift off services and electricity supply & reefer monitoring services are at par with the tariff notified by this Authority for IGTPPL for its operations at RGCT. The ground rent is proposed at the existing level of tariff prescribed in the SoR of COPT. The rate of ₹400/- per container proposed by COPT for examination of containers is reported to be an average of charges levied by IGTPPL outside RGCT, prior to commencement of container handling operations at ICTT. Consequent to migration of IGTPPL from RGCT to ICTT, the COPT has decided to continue the provision of pre-processing facility to ensure smooth movement of containers to and from ICTT.
- (iv).
 - (a). As stated earlier, the COPT has proposed to adopt the rates for lift on / lift off service and reefer monitoring service as prescribed in the Scale of Rates of IGTPPL vide Order No.TAMP/34/2005-IGTPPL dated 6 October 2005. Incidentally, the proposed rates are found to be in line with the rates approved in the Scale of Rates of IGTPPL vide Sections 3.2.2 and 3.5 read with clause 2 (vii) prescribed in Order No.TAMP/34/2005-IGTPPL dated 6 October 2005.
 - (b). As per clause 2.12 of the tariff guidelines of March 2005, when a new facility is commissioned, initial tariff to be allowed will not exceed the existing tariff level at the same port for comparable facilities. If such comparison is not available, prevailing tariff at comparable nearby port will be considered as the reference level. The initial tariff so adopted will be valid for the first year of operations where-after revised tariff will be fixed based on the admissible cost and investment of the operator. As stated earlier, the existing SoR of COPT approved by this Authority vide Order dated 23 February 2010 does not prescribe the charges for lift on / lift off and reefer monitoring services. It appears that in the absence of charges in its own Scale of Rates for such services, the COPT has adopted the charges prescribed in the Scale of Rates of IGTPPL for similar services. Therefore, the adoption of the charges prescribed in the Scale of Rates of IGTPPL by COPT follows the tariff guideline position.

- (c). As far as the levy of charges for the space occupied by the container at the pre-processing facility, the COPT has proposed to apply the ground rent prescribed in its own SoR without allowing free period. It appears that the COPT has proposed not to allow free period for the containers at the pre-processing facility since the containers are not meant for handling at its berths and it is not collecting wharfage and handling charges on such containers.
- (d). As brought out earlier, the COPT has proposed to levy charges for examination of containers @ ₹400/- per container irrespective of the size of the containers and timing of processing.

In the Order No.TAMP/48/2011-GTIPL dated 19 January 2012 passed by this Authority disposing off the proposal filed by the Gateway Terminals India Pvt. Ltd. (GTIPL) for general revision of its SoR, rates prescribed for stacking of containers for customs examination or for any other purpose ranges from ₹18.35 to ₹236.70 depending upon the size of the container. However, the proposal of the COPT is for prescription of a single rate irrespective of the size of the containers.

Though rates have been prescribed in the Scale of Rates of container terminals operated by CITPL, CCTPL and NSICT for examination of containers such rates relate to on-wheel inspection of the containers which may not be relevant for comparison with the rate proposed by the COPT. A rate of ₹170/- per container irrespective of the size of the container has been prescribed in the existing Scale of Rates of JNPT approved vide Order No.TAMP/53/2007-JNPT dated 18 February 2011 for stacking of the containers for customs examination or any other purpose. However, in the tariff Order recently passed by this Authority vide Order No.TAMP/10/2011-VCTPL dated 11 October 2011 and TAMP/40/2010-ABGKCTL dated 11 October 2011 disposing off the general revision proposals filed by VCTPL and ABGKCTL, a rate of ₹400/- and ₹356/- respectively has been prescribed irrespective of the size of the container for customs examination within the terminal. It is noteworthy that the rate proposed by the COPT is at par with the rate prescribed for VCTPL and closer to the rate prescribed for ABGKCTL.

- (e). Keeping in view the position that the rate for examination of containers proposed by the COPT is comparable with the rate prescribed in the SoR of VCTPL and ABGKCTL, the rates for lift on / lift off service and electricity supply & reefer monitoring service proposed by COPT follows the tariff guideline position and the ground rent proposed by COPT is drawn from rates already prescribed in the SoR of the port and recognizing the position that the users have endorsed the proposed rates, this Authority is inclined to approve the rates proposed by the COPT without any change for rendering the pre-processing services at the Q7 area of the port.
- (v). The Shipping Corporation of India (SCI) has made a request that the general conditionality laid down by TAMP to the effect that the ground rent will cease beyond 75 days in respect of abandoned FCL / shipper owned containers is inserted in the tariff clause itself to ensure that the port abides by the general rule. The existing approved Scale of Rates of COPT already contains the conditionalities governing the application of storage charges on abandoned FCL containers / shipper owned containers, which is binding on the COPT. Therefore, prescription of the said conditionalities in the SoR of COPT will be a mere repetition.

- (vi). The Marine Products Export Development Authority (MPEDA) has expressed concern about the charges levied by the Shipping companies. The charges levied by the shipping companies do not fall within the regulatory regime of this Authority.
- (vii). With reference to the request made by the Coffee Board that the cost incurred at Q7 area should be borne by the COPT till all facilities are made available at ICTT, it has to be recognized that the port is rendering additional services at Q7 area which involves additional cost to the port. Hence, it is not fair to expect the port to render such services free of cost.
- (viii). As per clauses 2.17.1 and 2.17.2 of the tariff guidelines of 2005, whenever a specific tariff for a service / cargo is not available in the notified SoR, the port can submit a suitable proposal. Simultaneously with the submission of proposal, the proposed rate can be levied on an ad hoc basis till the rate is finally notified. However, the ad hoc rate must be derived based on the existing notified tariffs for comparable services and it must be mutually agreed upon by the port and the concerned users. The port is already collecting the proposed charges on ad hoc basis from 21 February 2011 as seen from the Trade circular issued by the port with the consent of the users. The COPT has furnished documentary evidence for consent of users and the proposed charges have been derived based on the notified tariff for comparable services, except charges for examination of containers which is also comparable with the rates prescribed in the Scale of Rates of VCTPL and ABGKCTL, as stated earlier. Clause 2.17.4 of the tariff guidelines of 2005 enables this Authority to recognize the interim rate adopted in an ad-hoc manner retrospectively unless it is found to be excessive requiring some moderation retrospectively. Since no moderation is required in the rates proposed by the COPT, this Authority is inclined to recognize the rates levied by the port in an ad hoc manner from 21 February 2011, the date of implementation of the proposed rates till the effective date of implementation of the rates approved by this Authority.
- (ix). Since the port has already started collecting the proposed charges, the rates approved will come into force upon the notification of the Order passed in this case without any lead time.
- (x). The tariff guidelines stipulate a tariff validity cycle of 3 years. However, the rates proposed by the COPT in the subject proposal are on ad hoc basis. Further, the COPT has included the charges for these services in its proposal for general revision of its SoR which is under the proceedings of this Authority. That being so, it is appropriate to prescribe the validity of the rates approved in this case till the effective date of implementation of the SoR of the port to be approved by this Authority in the general revision proposal.
- (xi). The charges for pre-stage services is incorporated in the Scale of Rates of the COPT as a separate schedule under Chapter V – Container Related Charges.

8. In the result, and for the reasons given above and based on a collective application of mind, this Authority approves the following charges which are incorporated as schedule 5.4 under Chapter V of existing Scale of Rates of the COPT:

"5.4. Charges for pre-stage services to containers to/from ICTT

(a). Charges for examination of import & Export container for clearance:

20'	40'	45'
₹ 400		

(b). Lift on /Lift off charges for containers:

Type	Foreign (in ₹)			Coastal (in ₹)		
	20'	40'	45'	20'	40'	45'
Laden	570.24	855.36	1140.48	342.14	513.22	684.29
Empty	178.20	267.30	356.40	106.92	160.38	213.84

- (c). Reefer charges for containers – Electricity supply and monitoring charges per 4 hours or part thereof.

Foreign (US \$)			Coastal (₹)		
20'	40'	45'	20'	40'	45'
3.18	4.76	6.35	138.40	207.58	276.80

- (d). Ground Rent on Containers:

Ground Rent will be levied for containers availing storage from the day following the date of grounding, at the rates prescribed at schedule 5.1.2 of the Scale of Rates of the port without allowing the free period prescribed therein."

(Rani Jadhav)
Chairperson

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

F.No.TAMP/21/2011-COPT

- Proposal from the Cochin Port Trust seeking approval of charges for providing pre-processing facility to EXIM Containers at Q-7 area.

1. In accordance with the consultative procedure prescribed, the COPT proposal was forwarded to the user/ user organisations seeking their comments. The comments received from users/ user organisations were forwarded to COPT as feedback information. The COPT has also furnished its response. The summary of comments received from users/ user organizations and response of COPT are summarized below:

Sl. No	Comments of users / user organisations	Response from COPT
(1).	Shipping Corporation of India Limited	
(i).	The SCI is broadly agreeable to the adhoc rates proposed by COPT for pre-stage examination, outside the erstwhile RGCT at Q-7 area, as they are consistent with earlier rates charged by DPW and if, cleared by TAMP would be applicable till the next general tariff review scheduled around 31/3/2012.	The COPT has not commented.
(ii).	The need of the hour is to boost exports through the newly commissioned ICTT and some promotional tariff would induce more traffic.	The COPT has not commented.
(iii).	As far as reefer containers are concerned, the relevant item (no.iii) mentions electricity and monitoring charges. This can be reviewed considering that in the past except for providing electric connection, the port staff have never monitored the satisfactory functioning of the reefer boxes while this aspect is by and large handled by employing specialist firms on their own account.	The comment has been noted and the Port will strive to ensure a better service.
(iv).	Approval for ground rents should be given with the provision that in case of offloaded import boxes abandoned by consignees which become longstanding containers, the COPT should abide by the general rule laid down by TAMP (ground rent to cease for a period beyond 75 days auction proceedings be initiated). This needs to be inserted in the tariff clause itself to prevent ambiguity and varying interpretations of what constitutes an abandoned container.	This issue is already covered by TAMP guidelines for Tariff Fixation dated 31.3.2005.
(v).	Similarly this facility is for the use of shipper and consignees and the COPT should not hold the lines responsible for unpaid charges or damages to their property by shipper/consignees/CHAs.	The COPT has not commented.

	TAMP should include such a clause in the tariff.	
(2).	Kerala Chamber of Commerce and Industry	
(i).	The Cochin Port Trust authorities providing the pre-processing facilities at Q-7 area, once ICCT commenced operation at Vallarpadam, is helpful for exporters/importers and EXIM community. Since the commencement of operation at ICCT, the overall cost of exports and imports from Cochin Port has increased considerably and till now there is no positive reduction in the rates. Accordingly some relief to the EXIM Community and Importers and Exporters may be given by reducing or by giving some concessions in the rates already published by Cochin Port Trust and collected with effect from 21.02.2011.	Concession on the port's charges shall be considered at a later stage.
(ii).	Regarding the charges for examination of import and export containers the rate is fixed as ₹400/- per container. While IGTPPL was operating the pre-stage, the said rates were collected with round the clock cargo examination and clearance of containers. But now Cochin Port Trust charges the same rate of ₹400/- and there is no examination and clearance facilities after office hours and during night hours. The said facility may be provided during night hours also as the same would surely be helpful for exporters/importers and EXIM community.	When the pre-stage facility was operated by IGTPPL, the container terminal was adjacent, and all the export containers other than those coming with Customs seal had to necessarily pass through the pre-stage facility. Therefore, IGTPPL arranged for Customs facility round the clock on MOT basis. However, after the shifting of container operations to Vallarpadam, there is no such compulsion, and volumes have drastically reduced, especially in the night, and therefore, providing Customs facility round the clock may not be worthwhile. The users, however, can directly avail Customs facility even in the night on MOT basis, which is availed occasionally.
(3).	Cochin Steamer Agents' Association	
(i).	The rates prescribed by Cochin Port Trust are the same rate that was prevailing at Rajiv Gandhi Container Terminal which IGTPPL was charging the Exim Trade for container operation.	The COPT has not commented.
(ii).	Since the container handling at the pre-processing facility envisaged by Cochin Port Trust is actually a second and third operation necessitated due to prevailing customs regulation in our country, it will be appropriate for Cochin Port Trust (who is actually a Trade facilitator) to offer a reduced tariff to Exim Trade so as to attract more cargo movement through Cochin Port Trust and through its Container Freight Station.	Concession on the port's charges shall be considered at a later stage.
(iii).	With almost three Container Freight Stations to be commissioned in near future, a very competitive rate/ tariff will assist Cochin Port Trust to attract a considerable volume of containerized cargo to the Container Freight Station	

	operated by Cochin Port Trust.	
(iv).	Apart from the above proposal, the SoR for Ground rent on containers should include the clauses with regard to storage charges on abandoned FCL containers/ shipper owned containers and containers seized/ confiscated by Customs Authorities which cannot be de-stuffed within prescribed time limit of 75 days.	This issue is already covered by TAMP guidelines for Tariff Fixation dated 31.3.2005
(v).	As per earlier notification, the storage charges will cease to apply after 75 days and CFS operator or Terminal may initiate proceeding for auctioning of such cargo/ containers lying un-cleared after 75 days of receipt at the CFS facility.	
(4).	The Marine Products Export Development Authority	
	The seafood exporters are exporting from ICTT and hence they have no comments to offer. However, Seafood Exporters Association of India (SEAI) has stated that export service providers such as Shipping Companies are currently levying exorbitant fee in the name of Terminal Handling Charges (THC) on export cargo, even more than three times than the rate fixed by TAMP in certain ports and the exporters also have to pay the shipping lines ₹1000/- to ₹ 3500/- for providing bill of lading.	The COPT has not furnished any comments.
(5).	Coffee Board	
(i).	The Vallarpadam terminal of the Cochin Port Trust which is opened recently has no proper facilities viz. lack of warehouse for exporters to stuff the container.	The COPT has not furnished any comments.
(ii).	Exporters have to send their containers first to Willingdon Island for stuffing and then to Vallarpadam by barge incurring additional cost of ₹ 5000/- for no fault of the exporter.	The COPT has not furnished any comments.
(iii).	The Coffee Exporters Association has also requested that the cost incurred at Q-7 area should be borne by the Port Trust till all facilities are made available at Vallarpadam Terminal.	The COPT has not furnished any comments.
(iv).	Container trader transport charges are very high and required to be examined.	The COPT has not furnished any comments.
(v).	Coffee being very sensitive in the international market, the exporters should not be made to suffer additional costs such as transporting the containers to Willingdon island for stuffing and then transporting through barge to Vallarpadam. The new rates should duly compensate for additional expenses on account of lack of facilities at Vallarpadam.	The COPT has not furnished any comments.

2. A joint hearing in this case was held on 28 March 2012 at the Cochin Port Trust (COPT) premises. The COPT made a power point presentation of its proposal. At the joint hearing, COPT and the concerned users/user associations have made the following submissions:

Cochin Port Trust

- (i). We are already collecting the proposed charges on adhoc basis as the facility is already thrown open to Trade. We handle about 40 containers in a day.
- (ii). Reachstacker with ₹ 2.16 crores investment is introduced at these facilities for Lift on/ off operations.
- (iii). Carrying out these operations at our CFS may be costly as well as involve lengthy procedure.

Cochin Custom House Agents' Association

- (i). We have shortage of CFS around Cochin. We endorse the proposal.

Cochin Steamer Agent's Association, Shipping Corporation of India Limited & Container Shipping Lines Association (India)

- (i). We fully endorse the proposal.