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TARIFF AUTHORITY FOR MAJOR PORTS

G No. 262

New Delhi

9 October 2013

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 the proposal received from M/s.JRE Infra Private Limited for notification of Scale of Rates for Berth No.15 at Kandla Port Trust (KPT) as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

TARIFF AUTHORITY FOR MAJOR PORTS
Case No. TAMP/26/2013-KPT

M/s. JRE Infra Private Limited

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Applicant

QUORUM:

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. Chandra Bhan Singh, Member (Economic)

ORDER

(Passed on 25th day of September 2013)

This case relates to the proposal received from M/s. JRE Infra Private Limited for notification of Scale of Rates for Berth No.15 at Kandla Port Trust (KPT).

2.1. M/s. JRE Infra Private Limited (JREIPL) has sent a letter bearing no.JREIPL/68/2013-14 dated 1 August 2013 requesting this Authority to issue tariff notification in favor of JREIPL. The main points made by JREIPL in its letter are summarized below:

- (i). JREIPL is the concessionaire of Berth no.15, a multi-purpose cargo berth (other than liquid and container) on BOT basis, at KPT.
- (ii). The construction work of Berth no.15 is complete and JREIPL have applied to KPT for issuance of completion/provisional certificate. Simultaneously, JREIPL is in the process of acquiring other permissions/clearances from the concerned authorities.
- (iii). The KPT has advised JREIPL vide letter dated 19 July 2013 to directly approach TAMP for tariff notification. JREIPL has enclosed a copy of KPT letter dated 19 July 2013.

2.2. The JREIPL vide its above referred letter has requested this Authority to notify its Scale of Rates (SoR) before commencement of its commercial operations.

3.1. Since JREIPL had not furnished its proposed SoR and statement of conditions and had also not indicated the likely date of commencement of its commercial operations at Berth No.15 at KPT, JREIPL vide our letter dated 6 August 2013, was requested to furnish the requisite information.

3.2. In response, the JREIPL vide its letter no. JREIPL/72/2013-14 dated 12 August 2013 has furnished a copy of its draft proposed SoR. JREIPL, however, did not indicate the likely date of commencement of its commercial operations at Berth No.15.

3.3. As the likely date of commencement of operations by JREIPL is prerequisite for determining the indexation factor for application on the upfront tariff notified by this Authority vide Order No.TAMP/35/2008-KPT dated 14 October 2008, the JREIPL was again requested vide our letter No.TAMP/26/2013-KPT dated 23 August 2013 to indicate immediately the likely date of commencement of its operations at Berth No.15.

3.4. The JREIPL vide its fax letter No.JREIPL/KPT/79/2013-14 dated 28 August 2013 has informed that the likely date of commencement of its operations at Berth No.15 at KPT is 9 September 2013.

4.1. A copy each of JREIPL's letters dated 1 August 2013 and 12 August 2013 was forwarded vide our letter dated 23 August 2013 followed by reminder dated 4 September 2013 to the KPT, inviting its comments and also for indicating the likely date of commencement of

operations by JREIPL at Berth No.15. The KPT vide its letter dated 07 September 2013 has responded as given below:

Sl. No.	Proposal of JREIPL	Comments of KPT
1.	Storage Charges (For cargo imported and to be exported)	Reframe the unit in accordance with TAMP Order No.TAMP/35/2008 dated 14 October 2008 and the Corrigendum issued vide Gazette No.167 dated 1 September 2009 i.e. Rate in ₹ Per MT per day.
2.	Likely date of commencement of the operation	On 26.08.13; IIT-Madras being Independent Engineer for the project has already issued the Provisional Completion Certificate for the project, wherein Independent Engineer certified that "the project can be safely and reliably placed in commercial service of the users thereof, and in terms of the Agreement, the Project is hereby provisionally declared fit for entry into commercial operation on 26.08.2013."

4.2. Subsequently, the JREIPL has also vide its fax letter No.JREIPL/KPT/81/2013-14 dated 10 September 2013 requested that the Storage Charges at Clause 4A and 4B under the head Storage Charges be read as "(Rate in ₹ Per MT per Day)" instead of "(Rate in ₹ Per MT)".

5. As per the Concession Agreement furnished by KPT earlier vide its letter no.DESW/ (GEN)/01/PPP dated 08 May 2013 at our request, the KPT has awarded the project of Development of Multipurpose Cargo (Other than Liquid/Container Cargo) Berth No.15 on BOT basis at Kandla Port to JREIPL. The Concession Agreement with KPT has been signed on 18 February 2011 and the agreement is valid for a period of 30 years from the date of award of concession. Article 8.1 of the said Concession Agreement stipulates that the concessionaire shall be entitled to recover tariff from the users of the project facilities and services as per the tariff notification set out in Appendix -12. The Appendix - 12 is the Scale of Rates notified by this Authority under cover of the tariff Order dated 14 October 2008 read with Corrigendum dated 28 July 2009 fixing upfront tariff for construction of four multipurpose cargo berths.

6.1. As per Clause 2.9.1. of the Tariff Guidelines of 2008 for fixation of upfront tariff, the private operator shall approach this Authority for notification of Scale of Rates containing ceiling rates applicable to his operations before commencement of commercial operations as required under Section 48 of the Major Port Trusts (MPT) Act and as per Clause 2.9.2. of tariff guidelines of 2008, the Scale of Rates to be framed by this Authority shall be in line with the tariff caps prescribed for the port and included in the bid document subject to indexation explained in Clause 2.8. Such Scale of Rates and statement of conditions shall be notified by this Authority in the Gazette of India as required by the Major Port Trusts Act, 1963.

6.2. As per clause 2.8 of guidelines for upfront tariff setting for PPP Projects at Major Ports, 2008, the Tariff Caps are to be indexed to inflation but only to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2008 and 1 January of the relevant year, and the adjusted tariff will come into force from 1 April of the relevant year to 31 March of the following year.

6.3. The base year for the upfront tariff and the corresponding annual escalation with effect from 1 April 2013 were already communicated to all the Major Port Trusts including KPT vide our letter No.TAMP/12/2009-Misc. dated 2 April 2013.

6.4. As per clause 6 [General Note to Schedule (2) to (5)] of the Scale of Rates of the upfront tariff Order dated 14 October 2008 fixing upfront tariff for the facility in reference, tariff caps have to be indexed to inflation to an extent of 60% of the variation in the WPI occurring between 1 January 2008 and 1 January of the relevant year. Accordingly, the escalation factor to be applied in the case in reference is 26.15% as per our letter dated 2 April 2013 read with clause 6 of the Scale of Rates.

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

- (i). This Authority has passed an Order No. TAMP/35/2008-KPT dated 14 October 2008 fixing upfront tariff based on the proposal filed by the Kandla Port Trust (KPT) for fixation of upfront tariff for construction of 13th to 16th multipurpose cargo berths on BOT basis at Kandla Port Trust which was notified in the Gazette of India on 12 November 2008 vide Gazette No.192. Subsequently, a Corrigendum dated 28 July 2009 was notified in the Gazette of India on 1 September 2009 vide Gazette No.167 changing the unit of levy of storage charges from "per MT" to "per MT per day". The KPT has awarded the project of construction of multipurpose cargo berth No.15 at KPT to M/s. JRE Infra Private Limited (JREIPL) and entered into a Concession Agreement on 18 February 2011 for a period of 30 years.
- (ii). As brought out earlier, Clause 2.9.1. of the Tariff Guidelines of 2008 for fixation of upfront tariff requires the private operator to approach this Authority for notification of the Scale of Rates containing ceiling rates applicable to his operations before commencement of commercial operations. Accordingly, the JREIPL has approached this Authority with a request to notify the Scale of Rates as required under the Tariff Guidelines of 2008.
- (iii). As reported by the JREIPL, the operator expects that the commercial operations will commence w.e.f. 9 September 2013. The KPT has also informed that the Independent Engineer for the project has certified that the project is provisionally fit for commercial operation on 26.08.2013. Relying on the position reported by JREIPL and by the KPT, this Authority is inclined to entertain the proposal of JREIPL for notification of the Scale of Rates approved in October 2008 subject to adjustment with reference to the indexation of the rates so approved to WPI to the extent of 60%.
- (iv). The KPT, while furnishing its comments on the proposal of JREIPL, has pointed out that the unit of levy for Storage Charges proposed by JREIPL under Schedule 4 – Storage Charges, (A) For Import and (B) For Export should be corrected as "per MT per day" as per the Corrigendum issued by this Authority dated 28 July 2009. The JREIPL has also agreed with this point of KPT. The SOR proposed by JREIPL is accordingly corrected to that extent prescribing the unit of levy for storage charge as "per MT per day".
- (v). As per Clause 2.9.2. of the Tariff Guidelines of 2008, the Scale of Rates to be framed by this Authority for the private operator as per Clause 2.9.1 should be in line with the tariff caps prescribed for the Port and included in the bid document, subject to indexation as explained earlier. The Appendix - 12 to the Concession Agreement entered by JREIPL with KPT is seen to be the Scale of Rates notified by this Authority under cover of the tariff Order dated 14 October 2008 fixing upfront tariff for construction of four multipurpose cargo berths, read with Corrigendum dated 28 July 2009.
- (vi). With reference to the indexation of the upfront tariff fixed vide Order dated 14 October 2008 as required under Clause 2.8. of the 2008 Guidelines, an escalation factor of 26.15% is applied on the tariff caps notified in November 2008. The JREIPL has drawn up the draft proposed SOR applying the escalation factor of 26.15% on the tariff caps notified in November 2008, along with the conditionalities governing the application of rates as prescribed in the said tariff Order. It is only the tariff items notified vide Order of October 2008 that have been subjected to change in view of the application of applicable escalation factor. For the subsequent years as well, the indexation to the extent of 60% of the WPI occurring between January 2008 and January of the relevant year has to be with reference to the tariff approved vide Order no.TAMP/35/2008-KPT dated 14 October 2008 and not with reference to the indexed Scale of Rates approved in this Order. The General note to Schedule (2) to (5) proposed by JREIPL retaining

the general note approved in the Order dated 2008 is, therefore, suitably modified clarifying this position. All the other conditionalities governing the application of the rates as approved in the Scale of Rates of the Order dated 14 October 2008 are retained. As stated earlier, the unit of levy of storage charge is prescribed as per the Corrigendum dated 28 July 2009 issued to the said Order.

- (vii). As per clause 3.8.5 of the 2008 guidelines which is reiterated in para 10.3 of the tariff Order of October 2008, if any question arises requiring clarifications or interpretation of the Scale of Rates and the statement of conditions, the matter shall be referred to this Authority and its decision in this regard will be binding on the operator.
- (viii). The JREIPL is expected to perform at least at the performance norms brought out in the bid documents / concession agreement. The actual performance of the JREIPL will be monitored by this Authority. If any complaint regarding quality of service is received, this Authority may enquire into such allegation and forward its findings to the Kandla Port Trust. If any action is to be taken against the JREIPL, the Kandla Port Trust shall initiate appropriate action in accordance with the provisions of the Concession Agreement.
- (ix). During the commercial operation at the terminal, within 15 days from the end of every quarter, the JREIPL is directed to submit to this Authority through the Kandla Port Trust a report containing the berth's physical and financial performance during the preceding three months.

7.2. In the result, and for the reasons given above and based on collective application of mind, this Authority approves the Scale of Rates for the Multipurpose Berth No.15 to be operated by the JREIPL at KPT attached as **Annex**.

7.3. The Scale of Rates notified for JREIPL will come into force from the date of commencement of commercial operations by JREIPL at KPT.

(T.S. Balasubramanian)
Member (Finance)

JRE Infra Private Limited
SCALE OF RATES

1.1. DEFINITIONS

In this Scale of Rates unless the context otherwise requires, the following definitions shall apply:

- (i). **“Coastal Vessel”** means any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal license issued by the competent authority.
- (ii). **“Foreign Vessel”** means any vessel other than a coastal vessel.
- (iii). **“Per day”** means per calendar day unless otherwise stated.

1.2. GENERAL TERMS AND CONDITIONS

- (i). The status of the vessel, as borne out by its certification by the Customs or the Director General of Shipping, is the relevant factor to decide whether vessel is 'coastal' or 'foreign-going' for the purpose of levy of vessel related charges; and, the nature of cargo or its origin will not be of any relevance for this purpose.
- (ii).
 - (a). The vessel related charges for all coastal vessels should not exceed 60% of the corresponding charges for other vessels.
 - (b). The cargo related charges for all coastal cargo other than thermal coal should not exceed 60% of the normal cargo related charges.
 - (c). In case of cargo related charges, the concessional rates should be levied on all the relevant handling charges for ship-shore transfer and transfer from / to quay to / from storage yard including wharfage.
 - (d). Cargo from a foreign port, which reaches an Indian Port 'A' for subsequent transshipment to Indian Port 'B' will be, levied the concessional charges relevant for its coastal voyage. In other words, cargo from / to Indian ports carried by vessel permitted to undertake coastal voyage will qualify for the concession.
- (iii). Interest on delayed payments / refunds:
 - (a). The user shall pay penal interest on delayed payments under this Scale of Rates. Likewise, the terminal operator shall pay penal interest on delayed refunds.
 - (b). The rate of penal interest will be 2% above the Prime Lending Rate of the State Bank of India.
 - (c). The delay in refunds will be counted only 20 days from the date of completion of services or on production of all the documents required from the users, whichever is later.
 - (d). The delay in payments by the users will be counted only 10 days after the date of raising the bills by the Terminal operator. This provision shall, however, not apply to the cases where payment is to be made before availing the services where payment of charges in advance is prescribed as a condition in this Scale of Rates.
- (iv). All charges worked out shall be rounded off to the next higher rupee on the grand total of the bill.
- (v). Users will not be required to pay charges for delays beyond reasonable level attributable to the terminal operator.

2. BERTH HIRE CHARGES:

The berth hire charge payable by masters / owners / agents of the vessel and other floating craft approaching or lying alongside the berth shall be as per the rates given below:

Sl. No.	Vessels	Rate per GRT per hour or part thereof	
		Foreign Going Vessel (in ₹)	Coastal Vessel (in ₹)
1.	All Vessels	1.24	0.74

Notes:

- (i). The period of berth hire shall be calculated from the time vessel occupies the berth.
- (ii). Berth hire includes charges for services rendered at the berth, such as occupation of berth, rubbish removal, cleaning of berths, fire watch, etc.
- (iii). No berth hire shall be levied for the period when the vessel idles at its berth for continuous one hour or more due to breakdown of terminal operator's equipment or power or for any other reasons attributable to the terminal operator.
- (iv).
 - (a). Berth hire shall stop 4 hours after the time of vessel signaling its readiness to sail.
 - (b). The time limit of 4 hours prescribed for the cessation of berth hire shall exclude the ship's waiting time for want of favorable tide conditions, inclement weather, and due to lack of night navigation.
 - (c). The master / agent of the vessel shall signal readiness to sail only in accordance with favorable tidal and weather conditions.
- (v). The Penal Berth hire shall be equal to one-day's (24 hours) berth hire charge for a false signal.
"False signal" would be when the vessel signals readiness and asks for a pilot in anticipation even when she is not ready for un-berthing due to engine not being ready or cargo operation not completed or such other reasons attributable to the vessels. This excludes the signaling readiness when a vessel is not able to sail due to unfavorable tide, lack of night navigation or adverse weather conditions."

3. CARGO HANDLING CHARGES:

The cargo handling charges shall be payable on the manifested cargo directly by the importer of cargo at the rates specified below:

Sl. No.	Commodity	Rates in Rupees (Per Tonne)	
		Foreign	Coastal
(a).	Foodgrains and Fertilisers	238.65	143.19
(b).	Thermal Coal	178.89	178.89
(c).	Coal (other than thermal coal), Limestone, Minerals, Sugar, Salt, etc.	178.89	107.34
(d).	Other dry bulk	397.32	238.40
(e).	Steel and Bagged cargo	447.25	268.36
(f).	Timber Logs	716.00	429.60

Note:

The handling charges prescribed above is a composite charge for (i) unloading of the cargo from the vessel including stevedoring and transfer of the same upto the point of storage, storage at the stackyard upto a free period of 5 days and loading on to trucks in respect of import cargo and (ii) unloading of the cargo from the trucks at the stackyard, storage at the stackyard upto a period of 15 days, transfer the cargo to the loading point and loading onto the ship including stevedoring. This composite charge includes wharfage and supply of labour, wherever necessary.

4. **STORAGE CHARGES:**

The storage charges for the cargo stored in the stackyard beyond the free period allowed shall be as below:

(A). **For import**

(Rate in ₹ Per MT per Day)

Sl. No.	Commodity	Rate for sixth day to twelfth day	Rate for thirteenth day to nineteenth day	Rate for twentieth day onwards
(a).	All types of cargo	12.62	18.92	25.23

(B). **For export**

(Rate in ₹ Per MT per Day)

Sl. No.	Commodity	Rate for sixteenth day to twenty-second day	Rate for twenty-third day to twenty-ninth day	Rate for thirtieth day onwards
(a).	All types of cargo	12.62	18.92	25.23

Notes for Sections 4 (A) and 4 (B) above:

- (i). Five free days for import cargo and fifteen free days for export cargo shall be allowed. For the purpose of calculation of free period, Customs notified holidays and Terminal's non-working days shall be excluded.
- (ii). Storage charges shall be payable for all days including Terminal's non- working days and Customs notified holidays for stay of cargo beyond the prescribed free days.
- (iii). Storage charge on cargo shall not accrue for the period when the terminal operator is not in a position to deliver / ship the cargo when requested by the user due to reasons attributable to the terminal operator.

5. **MISCELLANEOUS CHARGES**

Sl. No.	Commodity	Rate in Rupees (per tonne)
(a).	All types of cargo	19.63

The miscellaneous charges prescribed above is a composite charge for provision of all miscellaneous services such as sweeping of cargo on the wharf, weighment of cargo, dust suppression etc.

6. **GENERAL NOTE TO SCHEDULE (2) TO (5) ABOVE:**

The tariff caps prescribed in the Scale of Rates of JRE Infra Private Limited takes into consideration the upfront tariff approved by the Authority vide Order No. TAMP/35/2008-KPT dated 14 October 2008 and applying indexation to the extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2008 and 1 January of the relevant year. For the subsequent years as well, upfront tariff approved in the Order No.TAMP/35/2008-KPT dated 14 October 2008 will be indexed to inflation but only to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2008 and 1 January of the relevant year. Such automatic adjustment of tariff caps will be made every year and the adjusted tariff caps will come into force from 1 April of the relevant year to 31 March of the following year.
