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Tariff Authority for Major Ports

G No. 29 **New Delhi, 7 February 2013**

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from the Ras Infraport Private Limited for notification of Scale of Rates approved vide Order No.TAMP/35/2008-KPT dated 14 October 2008 notified on 12 November 2008 vide Gazette No.192 pertaining to Construction of four Multipurpose Berths on BOT basis at Kandla Port in pursuance of the guidelines for upfront tariff setting for Public Private Participation (PPP) projects at Major Ports vide this Authority's Notification No.TAMP/52/2007-Misc. dated 26 February 2008 as in the Order appended hereto.

(Rani Jadhav)
Chairperson

Tariff Authority for Major Ports

Case No. TAMP/35/2008-KPT

M/s. Ras Infraport Private Limited - - - - - Applicant

QUORUM:

(i). Smt. Rani Jadhav, Chairperson
(ii). Shri. T.S. Balasubramanian, Member (Finance)

O R D E R

(Passed on this 24th day of January 2013)

This Authority had 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 four multipurpose cargo berths on BOT basis at Kandla Port Trust and the said order 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".

2.1. In this connection, we have received a letter dated 20 November 2012 from Ras Infraport Private Limited (RIPL). The main points made by RIPL in its letter are summarized below:

(i). We are the concessionaire of the project for construction of Berth 13, a multipurpose cargo berth (other than liquid and container) on BOT basis at Kandla Port Trust. The Concession Agreement with KPT has been signed on 3 December 2009.

(ii). RIPL plans to commence its operations at Berth No.13 w.e.f. 21 January 2013.

(iii). The upfront tariff for this project has been fixed by the Authority's order dated 14 October 2008. As per the said order and the indexation of tariff as required under clause 2.8 of the tariff guidelines of 2008, 20.11% is applicable for the financial year 2012-13 as intimated by the Authority. Following is the summary of ceiling rate applicable for the project:

(a). Berth Hire Charges:

Sl. No.	Vessels	Rate per GRT per hour or part thereof			
		Foreign Going (in ₹)		Coastal (in ₹)	
		As approved vide Order dtd. 14.10.08	Proposed (with escalation of @ 20.11%)	As approved vide Order dtd. 14.10.08	Proposed (with escalation of @ 20.11%)
(i).	All vessels	0.98	1.18	0.59	0.71

(b). Cargo Handling Charges**:**

	Commodity	Rate per Tonne in Rupees			
		As approved vide Order dtd. 14.10.08		Proposed Ceiling rate (with escalation of @ 20.11%)	
		Foreign	Coastal	Foreign	Coastal
(a).	Food grains and Fertilisers	189.18	113.51	227.22	136.34
(b).	Thermal Coal	141.81	141.81	170.33	170.33
(c).	Coal (other than thermal coal), limestone, Minerals, Sugar, Salt, etc.	141.81	85.09	170.33	102.20
(d).	Other dry bulk	314.96	188.98	378.30	226.98
(e).	Steel and Bagged cargo	354.54	212.73	425.84	255.51
(f).	Timber logs	567.58	340.55	681.72	409.03

(c). Storage Charges:

(i). For IMPORT (Rate per tonne in ₹ per day) No charges for 1 to 5 days

Sl. No.	Commodity	As approved vide Order dtd. 14.10.08	Proposed (with escalation of @20.11%)
	All types of Cargo		
(i).	No charges for 1 to 5 days	0.00	0.00
(ii).	Rate for 6 days to 12 days	10.00	12.01
(iii).	Rate for 13 Days to 19 Days	15.00	18.02
(iv).	Rate for 20 days onwards	20.00	24.02

(ii). For EXPORT (Rate per tonne in ₹ per day)

Sl. No.	Commodity	As approved vide Order dtd. 14.10.08	Proposed (with escalation of @20.11%)
	All types of Cargo		
(i).	No charges for 1 to 15 days	0.00	0.00
(ii).	Rate for 16 days to 22 days	10.00	12.01
(iii).	Rate for 23 Days to 29 Days	15.00	18.02
(iv).	Rate for 30 days onwards	20.00	24.02

(d). Miscellaneous Charges:

Commodity	As approved vide Order dtd. 14.10.08	Proposed (with escalation of @ 20.11%)
All types of Cargo	15.56	18.69

2.2. Enclosing a copy of the Scale of Rates depicting the approved Scale of Rates of 14 October 2008 Order and the proposed Scale of Rates, the RIPL has requested this Authority to notify the Scale of Rates for operation of Berth No. 13.

3. The KPT has awarded the project of Development of Multipurpose Cargo Berth No.13 on BOT basis at Kandla Port to M/s.Ras Infraport Private Limited (RIPL). The Concession Agreement with KPT has been signed on 3 December 2009 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 fixing upfront tariff for construction of four multipurpose cargo berths.

4. A copy of RIPL's letter dated 20 November 2012 was forwarded vide our letter dated 5 December 2012 to the KPT, Licensor, inviting its comments. After a reminder, the KPT vide its letter dated 31 December 2012 has responded. The response of the KPT is given below:

Sl. No.	M/s. RIPL Observations	KPT comments
1.		The Proposed Scale of Rates should also contain the "Definitions" "General terms and Conditions" as per Article 1.1 and 1.2 of Annex-IV of TAMP Order No.TAMP/35/2008 dated 14 October 2008 (which has not been included by M/s.RIPL)
2.		In the letter of M/s.RIPL dated 20th November 2012, M/s.RIPL informed that they will handle the commodities/cargo which includes "coal". We kindly request the Concessionaire to mention whether "Thermal Coal" will be handled or not as the tariff for thermal coal handling will not have concessional tariff as per clause 4.3 and 6.1.2 of Tariff Guidelines notified in Gazette of India on 31/3/2005.
3.	Berth Hire Charges	(i). The proposed ceiling rate in ₹ per GRT per hour with escalation @ 20.11% should be mentioned with point of time from which it is to be effective.

		(ii). In the note (v), in 2nd Line, the word "or" is replaced by word compared to TAMP order No. TAMP/35/2008 dated 14 October 2008 (the line refers to: False signal would be.. due to engine not being ready or cargo operation not completed…) (iii). In first line the word "idles" is replaced by word "is" as compare to TAMP order no.TAMP/35/2008 dated 14 October 2008 (the line referes to "No berth hire shall be levied for the period when the vessel "odles" at its berth for continuous…")
4.	Cargo Handling Charges	(i) The proposed ceiling rate in ₹ per tonne with escalation @ 20.11% should be mentioned with point of time from which it is to be effective.
5.	Storage Charges (For cargo imported and to be exported)	(i) The following line should be added as per the Annex-IV of TAMP order No.TAMP/35/2008 dated 14 October 2008. "The storage charges for the cargo stored in the stackyard beyond the free period allowed shall be as below" (ii) The proposed ceiling rate in ₹.per tonne per day with escalation @ 20.11% should be mentioned with point of time from which it is to be effective should be mentioned for both Import and Export of Cargo. (iii) Reframe the unit in accordance with TAMP order No.TAMP/35/2008 dated 14 October 2008, and the Corrigendum GNo.167 dated 01 Sept 2009 i.e., Rate in ₹ per MT per day.
6.	Miscellaneous Charges	(i) The proposed ceiling rate in ₹ per tonne with escalation @ 20.11% should be mentioned with point of time from which it is to be effective.
7.	General Note to Schedule (1) to (4) above	The proposed ceiling rate is already escalated by 20.11% so it cannot occur between 1 Jan 2008 and 1 Jan of relevant year. Instead, the Concessionaire shall make a correction hereby incorporating 1st Jan 2012 and 1st Jan of the relevant year. Such automatic adjustment of tariff caps will be made every year and the adjusted tariff caps will come into force 1st April 13 to 31st March 2014.
8.	The KPT will levy and collect all other vessel related charges on the bulk vessels except berth higher charges as per its Scale of Rates. (Point h of forwarding letter)	Word "bulk" required to be deleted and the word "higher" may be replaced as "hire" the line refers to "the KPT will levy and collect all other vessel related charges on the vessels except berth hire charges as per the scale of rates.

5.1. Clause 2.9.1. of the Tariff Guidelines of 2008 for fixation of upfront tariff stipulates that before commencement of commercial operations, the private operator shall approach this Authority for notification of Scale of Rates containing ceiling rates applicable to his operations, as required under Section 48 of the Major Port Trusts Act, 1963. Clause 2.9.2. of the Tariff Guidelines of 2008 for fixation of upfront tariff stipulates that the Scale of Rates to be framed by TAMP as per Clause 2.9.1. 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. These provisions have also been made in the upfront tariff Order of November 2009.

5.2. As per clause 2.8 of guidelines for upfront tariff setting for PPP Projects at Major Ports, 2008, the Tariff Caps 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, and the adjusted tariff will come into force from 1 April of the relevant year to 31 March of the following year.

5.3. The base year for the upfront tariff and the corresponding annual escalation with effect from 1 April 2012 were already communicated to all the Major Port Trusts including KPT vide our letter No.TAMP/12/2009-Misc. dated 18 April 2012 as given below:

Tariff with base WPI as on	Escalation factor to be applied
1 January 2011	5.89%
1 January 2010	12.18%
1 January 2009	13.71%
1 January 2008	20.11%

5.4. 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 will 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 20.11% as per our letter dated 18 April 2012 read with clause 6 of the Scale of Rates.

6.1. 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 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 four multipurpose cargo berths on BOT basis. The KPT has awarded the project of construction of multipurpose cargo berth No.13 at KPT to M/s.Ras Infraport Private Limited (RIPL) and entered into a Concession Agreement on 3 December 2009 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 RIPL 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 RIPL, the operator expects that the commercial operations will commence w.e.f. 21 January 2013. Relying on the position reported by RIPL, this Authority is inclined to entertain the proposal of RIPL 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, being the Licensor, from whom comments on the proposal of RIPL were sought has furnished its comments on the proposed Scale of Rates, which are discussed below:

(a). As rightly pointed out by KPT, the Scale of Rates proposed by the RIPL does not contain Sections 1.1 (Definitions) and 1.2 (General terms and conditions) of the Scale of Rates notified along with the upfront tariff order dated 14 October 2008. These Sections are restored in the draft Scale of Rates proposed by RIPL.

(b). With reference to the question raised by the KPT whether the RIPL will handle thermal coal or not, the Scale of Rates notified vide upfront tariff order dated 14 October 2008 includes the cargo "Thermal Coal".

(c). With reference to the time of incidence of berth hire, the period of berth hire shall be calculated from the time vessel occupies the berth as stipulated in Note (i) to Section 2 (Berth Hire charges).

(d). The deficiencies pointed out by KPT in the second line of Note (v) to Section 2 (Berth Hire charges) and in the first line of Note (iii) to Section 2 (Berth Hire charges) in the Scale of Rates proposed by RIPL appear to be typographical error and are rectified.

(e). The sentence "The storage charges for the cargo stored in the stackyard beyond the free period allowed shall be as below" appearing in Section 4 (Storage charges) of the Scale of Rates notified in the Upfront tariff order of October 2008 is missing in the draft Scale of Rates proposed by the RIPL as pointed out by the KPT. The said sentence is restored in the Scale of Rates.

(f). The KPT has requested to indicate when the Scale of Rates will come into force. Since the BOT operator must be in a position to levy the charges from the day the operator commences his commercial operation, it is appropriate that the Scale of Rates is made effective from the date of commencement of commercial operations at the Berth No.13 of the KPT.

(g). With reference to the suggestions made by the KPT that the base year to be considered for application of escalation factor should be 2012 and not 2008, it is stated that as per Section 6 [General Note to Schedule (2) to (5)] of the Scale of Rates of the upfront tariff order of October 2008 the variation in the WPI occurring between 1 January 2008 and 1 January of the relevant year to the extent of 60% should be applied on the tariff caps notified in 2008.

(h). The KPT has suggested some corrections in the mention made by the RIPL in its covering letter with regard to levy of vessel related charges by KPT except berth hire charges. Levy and collection of vessel related charges except berth hire by KPT on the vessels that may visit the Berth No.13 is governed by the Concession Agreement entered between KPT and RIPL and not by the Scale of Rates notified under the upfront tariff order of October 2008.

(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 RIPL 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 20.11% is to be applied on the tariff caps notified in November 2008. Applying the escalation factor of 20.11% on the tariff caps notified in November 2008, the Scale of Rates implementable by the RIPL is drawn up along with the conditionalities governing the application of rates as prescribed in the tariff Order of October 2008. It is to be noted here that only the rates of tariff items notified vide Order of October 2008 have been subjected to change in view of the application of applicable escalation factor and all the conditionalities governing the application of the rates as contained in Order of October 2008 remain without any change.

(vii). As stipulated in para 10.3 of the Tariff Order of October 2008, as per Clause 3.8.5. of the Guidelines, 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 RIPL is expected to perform at least at the performance norms brought out in the bid documents / concession agreement. The actual performance of the RIPL will be monitored by this Authority. If any complaint regarding quality of service is received, this Authority will enquire into such allegation and forward its findings to the Kandla Port Trust. If any action is to be taken against the RIPL, 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 RIPL shall submit to this Authority through the Kandla Port Trust a report containing the berth's physical and financial performance during the preceding three months.

6.2. In the result, and for the reasons given above, and based on a collective application of mind, this Authority notifies the Scale of Rates for the Multipurpose Berth No.13 to be operated by the RIPL at KPT attached as **Annex**.

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

(Rani Jadhav)
Chairperson

ANNEX

Ras Infraport 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 other wise 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 transhipment 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 Re.)	Coastal Vessel (in Re.)
1.	All vessels	1.18	0.71

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	Rate in Rupees (Per Tonne)	
		Foreign	Coastal
(a).	Foodgrains and Fertilisers	227.22	136.34
(b).	Thermal Coal	170.33	170.33
(c).	Coal (other than thermal coal), Limestone, Minerals, Sugar, Salt, etc.	170.33	102.20
(d).	Other dry bulk	378.30	226.98
(e).	Steel and Bagged cargo	425.84	255.51
(f).	Timber Logs	681.72	409.03

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	12.01	18.02	24.02

(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	12.01	18.02	24.02

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	18.69

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 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.

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