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TARIFF AUTHORITY FOR MAJOR PORTS

G No. 224 **New Delhi** **25 July 2014**

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 the Adani Mormugao Port Terminal Pvt. Ltd. for notification of its Scale of Rates for operation of berth No. 7 at Mormugao Port Trust (MOPT) as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports

(No. TAMP/13/2014–MOPT)

Adani Mormugao Port Terminal Pvt. Ltd - - - Applicant

QUORUM:

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

O R D E R

(Passed on this 04th day of July 2014)

This case relates to the proposal received from Adani Mormugao Port Terminal Pvt. Ltd. for notification of its Scale of Rates for operation of berth No. 7 at Mormugao Port Trust (MOPT).

2.1. M/s. Adani Mormugao Port Terminal Pvt. Ltd (AMTPL) vide its letter no. AMPTPL/TAMP/2013-14/01 dated 24 January 2014 requesting this Authority to notify its Scale of Rates (SOR) made the following main submissions :

(i). AMPTL has signed Concession Agreement with MOPT on 22 September 2009.

(ii). AMPTPL is the concessionaire for the Development of Coal Handling terminal at berth no.7 on Design, Build, Finance, Operate & Transfer (DBFOT) basis at MOPT.

(iii). The likely date of commencement of operations at Berth No.7 is 15 February 2013

(iv). As Per Article 8.1 of Concession Agreement (C.A.), concessionaire is entitled to recover tariff from the users of the project facilities and services as per the tariff notification set out in Appendix-11 of the C.A.

2.2. The upfront tariff for the said project was approved by this Authority vide Order No. TAMP/23/2008-MOPT dated 07 August 2008. As per the said Order the tariff needs to be indexed by 26.15% as applicable for the financial year 2013-14 with the base tariff approved in January 2008 as intimated by this Authority to all the Major Port Trusts.

2.3. The AMPTPL has, accordingly, forwarded the draft of the proposed Scale of Rates, applying 26.15% indexation to the rate approved in the tariff Order of 7 August 2008 and has requested this Authority to notify its Scale of Rates in the Gazette of India, as stated earlier.

3. With reference to a query to indicate the likely date of commencement of its operation, the AMPTPL, vide its letter dated 8 February 2014 intimated the likely date of commencement of its operation as 15 February 2014 and also agreed to furnish provisional certificate of completion on receipt from the Independent Authority.

4.1. Being the landlord port, a copy of the AMTPL proposal dated 24 January 2014 was also forwarded to MOPT to furnish its comments on the submissions made by AMPTPL. The MOPT was also requested to indicate the likely date of commencement of operation. The MOPT, vide its email dated 14 February 2014 has furnished its comments which are summarized below:

(i). The draft Scale of Rates furnished by AMPTPL is an extract of the tariff notification dated 20 August 2008 issued by the Authority with indexation in the tariff which is found to be in order.

(ii). Under the heading 'proposed Scale of Rates' the storage charges should have the words 'Rate in Rs. per tonne per day or part thereof' as prescribed in the tariff Order.

(iii). As per the schedule submitted by M/s. AMPTPL and concurred by Independent Engineer, the likely date of commencement of commercial operation is 7 June 2014 or earlier. AMPTPL has also vide its letter No. AMPTPL/CES/2013-14/47 dated 22 January 2014 to M/s. Consulting Engineering Services (India) Pvt. Ltd., New Delhi, requested the Independent Engineer to issue provisional completion certificate with a punch list in order to commence the commercial operation at the earliest.

4.2. Since there was a mismatch in the likely date of commencement of commercial operations indicated by the AMTPL as 15 February 2014 and MOPT as 7 June 2014, the AMPTPL, vide our letter dated 4 March 2014, was also requested to confirm the likely date of commencement of commercial operations and also furnish a copy of the completion certificate issued by Independent Engineer. This was followed by reminders as well.

4.3. Since the year 2013-14 was over, the escalation factor to the extent of 60% of the variation in WPI occurring between 1 January 2008 and 1 January 2013 is to be applied on the upfront tariff to make it effective for the period from 1 April 2014 to 31 March 2015. The AMPTPL was, therefore, requested vide our letter dated 16 May 2014, to submit updated draft Scale of Rates duly applying the applicable escalation factor on the upfront tariff fixed vide Order dated 7 August 2008.

4.4. In response, the AMPTPL vide its letter dated 14 June 2014 has forwarded a copy of the 'Provisional Completion Certificate' issued by the Independent Engineers M/s. Consulting Engineering Services Limited for the subject project. The other submissions made by AMPTPL in its letter are summarized below:

(i). The likely date of commencement of commercial operation by AMPTPL at berth no. 7 of MOPT will be 07 June 2014. This date is also confirmed earlier by MOPT.

(ii). The upfront tariff for this project has been fixed by this Authority's Order dated 7 August 2008 which is notified in the Gazette on 20 August 2008. As per the said order and the indexation of the tariff as required under clause 2.8 of the tariff guidelines of 2008, 31.58% is applicable for the FY 2014-15 as intimated by the Authority.

(iii). The AMPTPL has, accordingly, forwarded the proposed Scale of Rates duly escalating the rate approved in August 2008 Order by 31.58%.

5. Accordingly, as per clause 2.9.1. and 2.9.2. of the 2008 tariff guidelines, the AMPTPL has requested this Authority to notify Scale of Rates for its terminal at MOPT under Section 48 of the Major Port Trust Act.

6.1. As stated earlier, this Authority had passed an Order No. TAMP/23/2008-MOPT on 7 August 2008 on the proposal filed by MOPT fixing upfront tariff for the Development of Coal handling terminal at berth no.7 on Design, Build, Finance, Operate & Transfer (DBFOT) basis which was notified in the Gazette of India Extraordinary (Part III Section 4) on 20 August 2008 vide Gazette No.141.

6.2. 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 Major Port Trusts 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.

6.3. The likely date of commencement is informed by AMPTPL as 7 June 2014. This is also confirmed by MOPT while furnishing its comments on the proposal. The AMPTPL has forwarded a copy of provisional certificate in this regard.

6.4. As per clause 2.8 of the 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.

6.5. The base year for the upfront tariff and the corresponding annual escalation with effect from 1 April 2014 were already communicated to all the Major Port Trusts including MOPT vide our letter No. TAMP/12/2009-Misc. dated 1 April 2014.

6.6. As per General note to schedule (2) to (4) of Scale of Rates of the upfront tariff Order dated 7 August 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 31.58% as per our above letter dated 1 April 2014.

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/23/2008-MOPT dated 7 August 2008 on the proposal filed by Mormugao Port trust (MOPT) for fixation of upfront tariff for the Development of Coal handling terminal at berth no.7 on Design, Build, Finance, Operate & Transfer (DBFOT) basis which was notified in the Gazette of India Extraordinary (Part III Section 4) on 20 August 2008 vide Gazette No.141. The MOPT has award the project to M/s. Adani Mormugao Port Terminal Pvt. Ltd. (AMPTPL) for operation of berth No. 7 at Mormugao Port.

(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 AMPTPL has approached this Authority with a request to notify its Scale of Rates (SOR) as required under the Tariff Guidelines of 2008.

(iii). As brought out in the earlier part of this order, the operator AMPTPL and the landlord port MOPT have confirmed the expected date of commencement of the commercial operation by the terminal operator at berth no. 7 of the Mormugao Port as 7 June 2014. In view of that this Authority is inclined to entertain the proposal of AMPTPL for notification of the Scale of Rates approved in August 2008 subject to adjustment with reference to the indexation of the rates so approved to the WPI to the extent of 60%.

(iv). 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. Article 8.1 of the Concession Agreement (C.A.) entered between the MOPT and AMPTPL governs levy of the tariff at multipurpose berth No. 7. As per Article 8.1 of the License Agreement, the Concessionaire i.e. AMPTPL shall be entitled to recover tariff from the users of the Project Facilities and Services as per the Tariff Notification annexed as Appendix-11. It is seen that Appendix -11 appended to C.A. gives reference to the Notification details of the Upfront Tariff approved by this Authority vide Order No. TAMP/23/2008-MOPT dated 7 August 2008.

(v). With reference to the indexation of the upfront tariff fixed vide Order dated 7 August 2008 as required under clause 2.8. of the 2008 Guidelines, it is noteworthy that the AMPTPL had earlier while filing of its draft proposed SOR applied escalation factor of 26.15% on the tariff caps notified in August 2008. Subsequently, as the financial year 2013-14 was over the AMPTPL has filed revised draft SOR along with conditionaities governing the application of rates as prescribed in the August 2008 tariff Order applying the escalation factor of 31.58% as announced by this Authority on the tariff caps approved with the base year 1 January 2008. It is seen that only the tariff items notified vide Order of August 2008 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/23/2008-MOPT dated 7 August 2008 and not with reference to the approved indexed Scale of Rates. The General note to Schedule (2) to (4) proposed by AMPTPL retaining the general note approved in the Order dated 7 August 2008 is, therefore, suitably modified clarifying this position. This is in line with the prescription in the Scale of Rates of other BOT operators governed under 2008 guidelines who have commenced the operations. All the other conditionalities governing the application of the rates as approved in the Scale of Rates of the Order dated 23 August 2008 are retained.

(vi). As per clause 3.8.5 of the 2008 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.

(vii). The AMPTPL is expected to perform at least at the performance standards / norms brought out in the bid documents / Concession Agreement. The actual performance of the AMPTPL 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 MOPT. If any action is to be taken against the AMPTPL, the MOPT shall initiate appropriate action in accordance with the provisions of the Concession Agreement.

(viii). During the commercial operation at the terminal, within 15 days from the end of every quarter, the AMPTPL is directed to submit to this Authority through the MOPT a report containing the physical and financial performance at berth No.7 during the preceding three months.

7.2. In the result, and for the reasons given above and based on the collective application of mind, this Authority approves the Scale of Rates for operation of coal terminal at Berth No. 7 to be operated by the AMPTPL at MOPT attached as **Annex**.

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

(T.S. Balasubramanian)
Member (Finance)

ANNEX

ADANI MORMUGAO PORT TERMINAL PVT. LTD.
UPFRONT TARIFF SCHEDULE OF COAL TERMINAL

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). (a). The rates prescribed in the Scale of Rates are ceiling levels; likewise, rebates and discounts are floor levels. The terminal operators may, if they so desire, charge lower rates and/or allow higher rebates and discounts.

(b). The terminal operator may also, if they so desire rationalise the prescribed conditionalities governing the application of rates prescribed in the Scale of Rates if such rationalisation gives relief to the users in rate per unit and the unit rates prescribed in the Scale of Rates do not exceed the ceiling level.

(c). The terminal operator should notify the public such lower rates and/or rationalisation of the conditionalities governing the application of such rates and continue to notify the public any further changes in such lower rates and/or in the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rates notified by the TAMP.

(vi). 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	0.65	0.38

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**:

Sl. No.	Commodity	Unit	Rate in Rupees (₹)	
			Foreign	Coastal
1.	Coal handling charge			
(a).	Thermal coal	Per Metric Tonne	240.79	240.79
(b).	Other than Thermal coal	Per Metric Tonne	240.79	144.74

Note:

The handling charges prescribed above is a composite charge for unloading of the cargo from the vessel and transfer of the same upto the point of storage, storage at the stackyard upto a free period of 15 days reclaiming from stackyard and loading onto trucks/ railway wagon, sweeping of cargo on the wharf, dust suppression services and all other miscellaneous services provided.

4. **STORAGE CHARGES**:

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

(**Rate in ₹ per tonne per day or part thereof**)

Sl. No.	Commodity	Rate for five days for the balance cargo remaining after the free period	Rate for sixth day to tenth day for the balance cargo	Rate for Eleventh day onwards for the balance cargo
1.	Coal (all types)	15.79	31.58	63.16

Notes:

(i). Fifteen free Days shall be allowed, after complete discharge of vessel’s cargo. 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. **GENERAL NOTE TO SCHEDULE (2) TO (4) ABOVE**:

The tariff caps prescribed in the Scale of Rates of Adani Mormugao Port Terminal Pvt. Ltd. takes into consideration the upfront tariff approved by the Authority vide Order No.TAMP/23/2008-MOPT dated 7 August 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/23/2008-MOPT dated 7 August 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.

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