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Tariff Authority for Major Ports

G No. 130 **New Delhi,** **18 May 2012**

NOTIFICATION

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from the Mormugao Port Trust for revision of its estate rentals as in the Order appended hereto.

(T. S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports

Case No. TAMP/8/2012-MOPT

Mormugao Port Trust --- **Applicant**

O R D E R

(Passed on this 2nd day of May 2012)

This case relates to a proposal dated 11 January 2012 received from the Mormugao Port Trust (MOPT) for revision of its estate rentals.

2. It may be relevant to recall that the MOPT in its proposal for general revision of its tariff which was disposed by this Authority vide Order No.TAMP/57/2008-MOPT dated 14 May 2010, had interalia, proposed to increase the then existing Estate Rentals by 40% on adhoc basis to cover the revenue deficit in the concerned activity. For the reasons recorded in the said Order, this Authority had rejected the proposal of MOPT which was not in line with the Land Policy guidelines of 2004.

3.1. In this backdrop, the MOPT under cover of its letter dated 11 January 2012 has filed its proposal for revision of its estate rentals. The main points made by MOPT are summarised below:

(i). The Land Policy for Major Ports issued by the Ministry of Shipping (bearing no.PT/17011/55/87-PT) dated 8 March 2004 and subsequent guidelines issued in this regard from time to time for revision of lease rentals have been complied with. The MOPT has confirmed that its proposal is in line with the Land Policy for Major Ports announced by the Government of India and made applicable to all major port trusts vide MOS letter No. PT-11033/4/2009-PT dated 4 March 2011.

(ii). As per Clause 5.3(1) of the Land Policy Guidelines issued by the Government of India, a Committee has to be constituted for fixing market value of land and schedule of rates. Accordingly, a Committee was constituted by the Board headed by Chairman of the Port and the other members. It was decided to appoint an approved Land Valuer for assessing the market value of the land and accordingly a Government Registered Valuer was appointed. The Valuer has submitted his Report on valuation of port land.

(iii). The approved valuer has classified the land of the Port into six zones. The market value of land is assessed zone-wise. The Committee after going through the various aspects and considering the parameters given in the Land Policy Guidelines has accepted the market value of land as assessed by the approved valuer. The MOPT has furnished The Report of the Land Committee dated 23 December 2011.

(iv). The Committee has recommended the Scale of Rates for the estate rentals to the port land in six zones based on the valuation report submitted by the approved valuer. The location, market value of land, existing SOR and proposed lease rental @ 6% on market value (per 10 sq. mtr./ per month) are detailed below:

Particulars of Estate/ Zones	Market value in ₹ of port land assessed by approved valuer as per Valuation Report dated 16/7/2011	Existing SOR per m^2 per month after escalation in ₹	Proposed SOR per m^2 per month in ₹ taking 6% of market value as rent per month
Mormugao harbour area	10000	39.63	50.00
Headland/ Bogda	8000	31.47	40.00
Baina	10000	31.47	50.00
Vasco	50000	31.47	250.00
Dabolim	6000	No existing SOR	30.00
Dabolim/ Chicalim/ sancoale/ north of Zuari river/ Betul Foreshore	7000	5.86	35.00

The license fee for water area in the port's jurisdiction will be ₹17.50 per sqm. as against the present rate of ₹5.86/ sqm.

(v). An exercise based on the guidelines of TAMP in the prescribed format has been carried out to arrive at the extent and quantum of revision necessary to meet the gap between income and expenditure of principal activity "Estate Rentals". The Form 3A indicates a deficit of 35% based on the average for three years 2012-13 to 2014-15.

(vi). Form Nos.3A, 2A, 2B relating to estate activity, details of income of estate rentals and estate assets have been furnished, salient details of which are as follows:

(**₹ in lakhs**)

Particulars	**Estimates at existing tariff**			**Estimates at the proposed tariff**		
	2012-13	**2013-14**	**2014-15**	**2012-13**	**2013-14**	**2014-15**
Operating Income	1152.83	1176.84	1201.69	1651.37	1659.64	1668.43
Operating Expenditure	606.51	642.90	681.48	606.51	642.90	681.48
Depreciation	40.72	40.72	40.72	40.72	40.72	40.72
Overheads	334.62	354.70	375.98	334.62	354.70	375.98
FMI - FME	-209.61	-224.32	-239.91	-209.61	-224.32	-239.91
Capital Employed	2828.23	2795.11	2762.34	2828.23	2795.11	2762.34
ROCE	336.00	331.25	326.56	336.00	331.25	326.56
Net Surplus/ Deficit	-374.63	-417.05	-462.96	123.91	65.75	3.78
Net Surplus/ Deficit as % of Income	-32.50%	-35.44%	-38.53%	7.50%	3.96%	0.23%
Average Surplus / Deficit	-35.49%			3.90%		

3.2. The MOPT has proposed to revise the Scale of Rates under Part-III relating to Estate Rentals in the following manner:

"**General Note:**
All the conditions/ notes prescribed in the existing Scale of Rates/ Schedule of License Fees and Lease Rentals shall apply to the extent they are not inconsistent with the conditions prescribed in the Land Policy for Major Ports 2010 announced by the Government on 13 January 2011. Incase of disagreement, the conditions prescribed by the Government in the Land Policy for Major Ports 2010 shall prevail.

I. **LICENSE FEE ON PORT LAND FOR OFFICE BUILDING AND OTHER STRUCTURES**:

Description	**Rate per 10 sqm. or part thereof per calendar month or part thereof (in ₹)**
Licence fee on Port land for maintaining office bldgs. and other structures at:	
(a). Mormugao Harbour and Vasco Da Gama - Bay.	500.00
(b). Head Land Sada	400.00
(c). Baina	500.00
(d). Vasco Da Gama - City	2500.00
(e). Dabolim	300.00

Notes: The approval of the Board is to be obtained in case the land is used for building structures for residential purpose, in the above mentioned areas.

II. **CHARGES FOR OCCUPATION OF FORESHORE LAND**:

Sr. No.	**Description**	**Rate (in ₹)**	**Unit**
1.	For the purpose of carrying out launch/ barge repairs workshop or any other industry including Commercial/ Non-Commercial purpose at Vasco Da Gama bay.	500.00	Per 10 sqm. or part thereof per calendar month or part thereof.

2.	For the purpose of carrying out launch/ barge repairs workshop or any other industry including Commercial/ Non-Commercial purpose beyond Vasco Da Gama bay upto the port limits (Dabolim/ Chicalim/ Sancoale/ North of Zuari River/ Betul Foreshore).	350.00	- do -

III. **WAY LEAVE CHARGES**:

Sr. No.	Description	Rate per 10 sqm. or part thereof per calendar month or part thereof (in ₹)
	Way leave charges at:	
(a).	Mormugao, Vasco da Gama Bay.	500.00
(b).	Head Land Sada/ Bogda	400.00
(c).	Baina	500.00
(d).	Beyond Vasco Bay upto Port limit, Dabolim/ Chicalim/ Sancoale/ North of Zuari River/ Betul Foreshore	350.00

Note:

1. Area for this purpose of way leave charges shall be arrived at taking into account the external diameter of the pipeline plus 30 (thirty) centimeters as working space as the width and length of the pipeline.

2. The Licence Fees for water area shall be charged 50% of the licence fee of abutting land.

3. The SOR shall be escalated by 2% per annum every April, till such time that SOR is revised with the approval of the Competent Authority/ TAMP. The rate so arrived is rounded off to nearest Rupee.

4. The rates shown in the table above are applicable for the F.Y. 2012-13."

3.3. The MOPT vide its letter dated 12 April 2012 has stated that the Board of Trustees in its meeting held on 16 March 2012 has approved the proposal of the port for revision of estate rentals and has furnished a copy of the Resolution of the Board.

4. In accordance with the consultation process prescribed, a copy of the proposal of the MOPT was circulated to the concerned users/ user organisations seeking their comments. Apart from Mormugao Port Users Association (MPUA) who had no comments to offer, we have not received any comments from the users / user organisations on the subject proposal.

5. Based on a preliminary scrutiny of the proposal, the MOPT was requested to furnish additional information/ clarifications vide our letter dated 5 March 2012. The MOPT vide its letter dated 13 March 2012 has furnished its response. A summary of the queries raised by us and reply furnished by MOPT thereon are tabulated below:

Sl. No.	Queries raised by us	Reply furnished by MOPT
I.	**<u>GENERAL:</u>**	
(i).	The MOPT to confirm that its proposal is in conformity with the Land Policy for Major Ports approved by the Government of India and made applicable to all major port trusts vide MOS letter No. PT-11033/4/2009-PT with effect from 13 January 2011.	The proposal is in conformity with the Land Policy for Major Ports approved by the Government of India, vide MOS letter No.PT/11033/4/2009-PT w.e.f. 13 January 2011.
(ii).	The MOPT to confirm that the rate structure proposed by the MOPT is in accordance with end use as warranted by the Land Policy guidelines referred to above.	The rates structure proposed by the MOPT is in accordance with end use as warranted by the Land Policy guidelines.

(iii).	If on any matter the present proposal deviates from the Land Policy Guidelines referred above, MOPT to furnish the details thereof and the reasons therefor.	In the present proposal there is no deviation from the Land Policy guidelines.
(iv).	The MOPT to furnish Form – 1, giving details relating to the estate activity.	The Form I giving details relating to Estate activity was submitted alongwith the proposal. However, copy of the same is furnished.
(v).	As mentioned in Note 3 of Form – 1, please furnish the details of the leases granted by the port for commercial and other purposes, area-wise, separately for the last 3 years viz., 2009-10, 2010-11 and 2011-12.	Port has not entered into agreement for new leases in the past three years.
(vi).	MOPT has not furnished the comparative position between the Current and the proposed Scale of Rates and conditionalities obtaining as required at Part 2 of Form – 1. The MOPT to furnish a comparison of the existing and proposed rentals alongwith the existing and the proposed conditionalities in the prescribed format.	The comparative position between the current and proposed Scale of Rates and conditionalities is furnished.
(vii).	Note -4 to Form -1 requires a major port to confirm that Development Cost is allocated to land used by port and each category of rentable land at actuals or on pro-rata basis. The MOPT has not mentioned anything in this regard. Please furnish the original cost and the cost of development incurred subsequently for each category of land. It may also be stated whether the Development cost has been allocated to the rentable land. The basis of allocation, whether at actuals or on pro-rata basis may also be furnished.	The total original cost/ acquisition cost of port land is ₹898.25 lakhs. As regards to allocation of development cost, it is informed that port has not incurred major expenditure on development of port land.
II.	**VALUATION OF LAND:**	
(i).	Clause 6.3 (1) of the Land Policy guidelines prescribes the factors to be reckoned with for determination of the market value of the port land. It is seen from the proposal that the MOPT has considered the market value of land as assessed by the approved valuer alone as base to determine the lease rentals. In this context, the MOPT to clarify/ furnish the following:	
	(a). The reasons as to why the market value of the land has not been assessed based on the State Government's Ready Reckoner, as stipulated in Clause 6.3 (1) (a) (i) of the Land Policy guidelines of 2010, may be explained. The market value of the lands as per the State Government's Ready Reckoner may be furnished.	The market value of the land is not assessed based on the State Government's Ready Reckoner, because it is very much at lower side and not comparable with the present market rates. The copy of State Government's Ready Reckoner is furnished.
	(b). Clause 6.3 (1) (a) (ii) of the Land Policy guidelines of 2010 stipulates the average rate of actual relevant transactions registered in the last three years in the port's vicinity, as one of the factors for the purpose of assessment of market value of land. The average rate of actual relevant	There is no private land in port's vicinity for which sale deed transactions took place. However, the properties at Vasco area have been compared with the recent transactions. The copy of the extract from valuation report is furnished.

	transactions registered in the last three years in the vicinity of the relevant areas may be furnished.	
	(c). The reasons as to why the market value of the land has not been assessed based on the accepted tender rates as stipulated in Clause 6.3 (1) (a) (iii) of the Land Policy guidelines of 2010, may be explained. The accepted tender rates of port land for similar transactions may be furnished.	The port had made an attempt to float the tenders. However, there is no response from the users.
	(d). While finalizing the lease rental revision proposals of some of the other Major Port Trusts, this Authority felt that it would be appropriate for a Port Trust to assess the market value under all the options given in the Land Policy guidelines for Major Ports and derive lease rentals based on the one which is most beneficial to it. Since the MOPT has arrived at the market value of land based on the value arrived by the approved valuer only, the MOPT to assess the market value of its landed estate under all options given in the Land Policy guidelines and derive lease rentals based on the one which is most beneficial to it.	The Committee constituted for valuation of port had examined all aspects in accordance with para 6.3(1), "Market value of land and Schedule of Rates (SOR)" of Land Policy guidelines and decided that the rate arrived at by an approved valuer appointed for the purpose by the port is beneficial to the port.
(ii).	With reference to assessment of market value of land based on the value arrived by the approved valuer, the MOPT to furnish/ clarify the following:	
	(a). With reference to the area relating to Mormugao Harbour, though the valuer has arrived at market value of the land of ₹6000/- per sq.mtr., he has reported the market value of the land at ₹10000/- per sq.mtr., on the ground that the land would fetch higher returns if the land is reclaimed. The basis for the hike of ₹4000 per sq. mtr. may be explained.	The subject plot is located near the port water area. At present the plot is small and no demand due to small in size. The valuer has valued at ₹6000/- per sq. mtr. However, there is wide scope for reclaiming the rear seaside and thereby making plot larger in which case the plot will have greater potentiality for development or fetching higher returns. Since there is some other area within the vicinity having larger dimension, the same has been taken @ ₹10,000/- per sq. mtr. The copy of valuation report is furnished.
	(b). With reference to the area relating to Headland Sada, though the valuer has arrived at market value of the land of ₹5000/- per sq.mtr., he has reported the market value of the land at ₹8000/- per sq.mtr., on the ground that the land would fetch higher returns if the garbage plant is shifted. The basis for the hike of ₹3000 per sq. mtr. in the market value may be explained.	The valuer had valued the land at Headland Sada, @ ₹5000/- per sq. mtr. At present, the garbage plant of Mormugao Council is situated at Headland, Sada. This gives stinking smell. The unsightly and unhygienic appearance at the site has depreciated the value of land. The efforts are on with the local municipalities for shifting garbage plant out of Headland Sada/ Vasco city. If garbage site is shifted from Headland Sada, the value of the subject land will increase to ₹8,000/- per square metre.
III.	**PROPOSED RENTALS AND CONDITIONALITIES:**	
(i).	The existing Scale of Rates do not prescribe licence fee for areas like Headland Sada, Vasco Da Gama city and	The existing Scale of Rates prescribes licence fee for Headland, Sada. However, no licence fee is prescribed for areas at Vasco-Da-Gama

	Dabolim. In such a scenario, the existing arrangement and the rates levied on office buildings and other structures at the above mentioned areas may be explained.	City and Dabolim. The land at Dabolim is vacant and not allotted till date which was purchased for development of container yard. As regards licence fee at area of Vasco-Da-Gama city, it is informed that no licence fees are levied on Welfare buildings situated at Vasco city. However, recently one building has been constructed on a plot admeasuring an area of 0.07 acres, which is not yet allotted.
(ii).	The reason for deleting the existing Note (1) and (2) of Section I may be explained.	The existing notes 1 and 2 of Section I, are substituted in the proposal. (However, the proposed notes do not prescribe the rates to be levied for the land used/ licensed for building structures for residential purposes.)
(iii).	The basis and workings to arrive at the proposed charges for occupation of foreshore land may be furnished.	The proposed charges for occupation of foreshore land is based on the Report of the Land Valuer. The rates are arrived considering 6% return on the market value as per the Land Policy Guidelines.
(iv).	The existing three tier structure prescribing charges for occupation of foreshore land has been proposed to be truncated to a two tier structure by MOPT. The basis and the financial impact relating to the said rationalization may be furnished with details.	The proposed charges for occupation of foreshore land is based on the Report of the land valuer. The existing structure prescribing charges for occupation of foreshore land is under three heads, such as licence fees for barge building/ repair workshops or any other industry and also for commercial and non-commercial purpose. It was decided not to segregate charges for foreshore land on the basis of commercial and non-commercial purpose. The financial impact due to such rationalization is negligible as total income from foreshore land for the year was ₹13.62 lakhs.
(v).	The basis and workings to arrive at the proposed way leave charges may be furnished.	The proposed way leave charges is based on the land valuation and return of 6% as per Land Policy Guidelines.
(vi).	In the existing Scale of Rates, the unit for the levy of the way leave charges for pipelines is per 10 square meters per calendar month or part thereof. The MOPT has proposed to continue with the existing arrangement. In this context it may be relevant to mention here that the Authority vide its Order dated 10 August 2004 in respect of Jawaharlal Nehru Port Trust (JNPT) has prescribed formula for calculating way leave charges for pipelines. The same formula has been prescribed for calculating way leave charges for pipelines in case of Cochin Port Trust (COPT) (Order dated 4 May 2010), New Mangalore Port Trust (NMPT) (Order dated 16 June 2010) and Kolkata Port Trust (KOPT) (Order dated 19 January 2011) in the Scale of Rates of the respective Port Trust. The said Orders are available in the website of the Authority. The proposed Section III be modified in line with formula prescribed by the Authority.	As suggested by the Authority, the proposed note to Section III has been amended.

(vii).	The proposed Note 3 of Section III which states that the Scale of rates shall be escalated by 2% per annum every April, is not seen to be in line with the stipulation contained in the Land Policy Guidelines and hence may be modified.	At para 6.3 (c) of Land Policy, it is stated the SOR shall be escalated by 2% per annum. Escalation at every April of the calendar year is proposed for accounting and administrative convenience.
(viii).	The proposed Note 4 in Section III states that rates shown in the table are applicable for financial year 2012-13. It may be noted that rentals to be approved by the Authority will come into effect from the date of effect of the Order to be passed by the Authority.	Noted please.

6.1. A joint hearing in this case was held on 16 March 2012 at the Mormugao Port Trust (MOPT) premises. The MOPT made a power point presentation of its proposal. At the joint hearing, MOPT and the concerned users/ user organisations have made their submissions.

6.2. As decided at the joint hearing, the users were requested to furnish their written comments. Some of the users like South West Port limited (SWPL) and Zuari Industries Limited (ZIL) have furnished their comments. These comments were forwarded to the MOPT as feedback information. The MOPT has responded on the comments of SWPL and ZIL.

7. 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.

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

(i). Hitherto, the proposal of MOPT for revision of its estate rentals formed part of its general revision proposals, wherein the port requested this Authority to revise the estate rentals following the cost plus approach. In the tariff Orders of 2002 and 2006 disposing of the general revision proposals of MOPT, the cost plus approach as requested by MOPT for setting estate rentals was negated with a direction to the port to frame its proposal following the Land Policy Guidelines of the Government. Even in the tariff Order of May 2010 disposing of the general revision proposal of MOPT, this Authority had rejected the proposal of MOPT seeking an adhoc increase in the estate rentals as it was not in line with the Land Policy Guidelines of the Government. It is noteworthy that this Authority had only negated the increase in rates proposed by the port and not the validity of the existing rates. The existing rates, with annual escalation accrued, were allowed to continue till such time the port comes up with a proposal for their revision, duly complying with the extant guidelines and instructions. It is in this backdrop, that the MOPT has now come up with a proposal for revision of its estate rentals following the stipulations of the Land Policy Guidelines of 2010, after over a decade since the estate rentals of MOPT were last reviewed; and, the proposal of the port now seeks revision of estate rentals with prospective effect.

(ii). For the purpose of determining lease rentals for the lands belonging to the Port Trusts, this Authority is mandated to follow the land policy guidelines issued by the Government from time to time as stipulated in Clause 8 of the tariff guidelines issued by the Government in March 2005, as a policy direction under Section 111 of the MPT Act, 1963. The MOPT has confirmed that its proposal is in line with the Land Policy for Major Ports announced by the Government of India and made applicable to all major port trusts with effect from 13 January 2011.

(iii). The proposed lease rentals for the land alongwith the conditionalities have been recommended by a Committee headed by Chairman, MOPT and consisting of other officials of MOPT. Further, the proposed lease rentals and the conditionalities have been approved by the Board of Trustees of MOPT.

(iv). The Land Policy Guidelines of 2010 lay down the procedure and the methodology to be adopted for determining the market value and the lease rental of the port lands. As per Clause 6.3(1) of the Land Policy Guidelines, the market value of land can be determined taking into consideration any or all of the factors like (i) State Government's ready reckoner value, (ii) the average rate of actual relevant transactions took place in last three years for the lands in the port's vicinity, adding 2% escalation per annum, (iii) highest accepted tender value of port lands for similar transaction, (iv) rate arrived at by an approved valuer and (v) any other relevant factors as may be identified by the port. The lease rent has to be fixed at 6% of the market value of the land so determined and the rate is to be escalated by 2% per annum till such time the rate is revised with approval of this Authority.

(v). While finalizing the lease rental revision proposals of some of the other Major Port Trusts, this Authority felt that it would be appropriate for a Port Trust to assess the market value under all the options given in the Land Policy guidelines for Major Ports and derive lease rentals based on the one which is most beneficial to it. The MOPT was, therefore, advised to re-assess the market values of its landed estates under all options given in the Land Policy guidelines and derive lease rentals based on the one which is most beneficial to it.

Reportedly, the market value of the lands based on the State Government's Ready Reckoner is very much on the lower side when compared to the present market values. There is no sale of private lands in the port's vicinity in the last three years. Further, the port has not received response to the tenders floated by it. Therefore, the proposal of MOPT to determine the rental for its estates is based the market value of land as assessed by the approved valuer alone. It is relevant to mention here that the MOPT has categorically stated that the Committee constituted for valuation of land after examining all aspects in accordance with paragraph 6.3(1) of the Land Policy Guidelines has decided that the rate arrived by the approved valuer is beneficial to the port.

Land being a valuable resource, a port must strive to optimise its income from the landed estates. Determining the market value of land based only on a single approach may not always reflect the optimal position. Nevertheless, taking into account the position that a Committee headed by Chairman of MOPT has opined that the rate arrived by the approved valuer is beneficial to the port and that the proposal of MOPT has the approval of its Board of Trustees and also taking into account that there is no objection from any of the users consulted in this case, with regard to the approach adopted by the MOPT, this Authority is inclined to rely upon the approach adopted by MOPT to base its calculations based on the market value of the land as assessed by the valuer.

(vi). The approach adopted by MOPT in valuation of its estates and to arrive at the proposed lease rentals thereon is summarized below:

(a). The valuer has classified the Port land into six zones viz., Mormugao harbour area, Headland, Baina, Vasco, Dabolim, Dabolim/ Chicalim/ Sancoale and has assessed the zonewise market value of the land by taking into account the factors like prevailing sale prices and market surveys.

(b). With reference to the area relating to Mormugao Harbour, though the valuer has arrived at market value of the land of ₹6000/- per sq.mtr., he has reported the market value of the land at ₹10000/- per sq.mtr., on the ground that the land would fetch higher returns if the land is reclaimed. The MOPT is of the view that there is wide scope for reclaiming the rear seaside and thereby making plot larger in which case the plot will have greater potentiality for development or fetching higher returns.

Likewise, with reference to the area relating to Headland Sada, though the valuer has arrived at market value of the land of ₹5000/- per sq.mtr., he has reported the market value of the land at ₹8000/- per sq.mtr., on the ground that the land would fetch higher returns if the garbage plant is shifted. The MOPT has confirmed that the efforts are on with the local municipality for shifting garbage plant out of Headland Sada/ Vasco city and that if garbage site is shifted from Headland Sada, the value of the subject land will increase.

The argument put forth by MOPT for considering a higher market value of land at Mormugao Harbour and Headland Sada/ Vasco city is futuristic and would materialize only if the MOPT carries out the reclamation of the rear seaside at Mormugao Harbour and shifts the garbage plant from Headland Sada/ Vasco city. Therefore, it may not be correct to prescribe lease rentals based on the market values of the said lands which depend upon occurrence of certain contingencies. Hence, the lease rentals are prescribed based on the market value of the land at Mormugao Harbour at ₹6000/- per sq. mtr. and Headland Sada/ Vasco city at ₹5000/- per sq. mtr. However, MOPT can recover the lease rentals calculated on the revised market value of land at Mormugao Harbour and Headland Sada/ Vasco city as assessed by the valuer at ₹10000/- per sq. mtr. and ₹8000/- per sq. mtr. respectively as and when reclamation of the rear seaside at Mormugao Harbour and shifting the garbage plant from Headland Sada/ Vasco city are completed. An appropriate conditionality in this regard is prescribed in the Scale of Rates, so that the port need not seek the approval of this Authority once again.

(c). Considering a yield of 6% per annum on the market value of land as assessed by the valuer for the above mentioned six zones, the lease rentals for the said zones has been arrived by MOPT.

(vii). (a). Subject to the discussions above, the licence fees proposed by the port for land for maintaining office building and other structures at Mormugao Harbour and Vasco Da Gama – Bay, Head Land Sada, Baina, Vasco Da Gama – City and Dabolim is approved.

It is relevant to mention here that the existing Scale of Rates of MOPT do not prescribe licence fee for areas at Vasco Da Gama – City and Dabolim as the land at Vasco Da Gama city and Dabolim has not been allotted, as reported by MOPT. Now, the proposal of the port also includes prescription of licence fee for above mentioned two areas.

The ZIL has objected to the exorbitant hike in the rentals relating to Vasco city. The Land Policy Guidelines of 2010 require the lease rentals to be revised every five years based on the prevailing market value of the land. The market value of the land including Vasco city is bound to go up with the passage of time. The MOPT has framed the proposal following the Land Policy Guidelines and the hike in the lease rentals which is based on the market value of the land is, therefore, inevitable.

(b). The proposed charges for occupation of Foreshore land at Vasco Da Gama and Dabolim/ Chicalim/ Sancoale by MOPT is also calculated at 6% of the market value of the respective lands as assessed by the valuer and hence approved.

Incidentally, the existing three tier structure prescribing licence fees for occupation of foreshore land includes separate licence fee for utilization of the area falling within the port limits for commercial and non-commercial purpose. The MOPT has accommodated the said tariff item in the existing other two tariff items prescribing licence fee for carrying out repairs to the vessels or any other industry at Vasco bay and beyond Vasco bay.

However, while so accommodating the existing tariff item, the existing differentiation in licence fees for commercial and non-commercial purpose is proposed to be dispensed with. But, the reason for such dispensation remains unexplained, despite a query in this regard. Clause 6.3(1)(e) of the Land Policy Guidelines of 2010 stipulates that the SOR should vary in accordance with the purpose of land use and such varying SOR is to be recommended in accordance with the end use as reflected in the Land Use Plan. As brought out in the note relating to the factual position, the MOPT has confirmed that the rate structure proposed by it is in accordance with the end use as stipulated in the Land Policy Guidelines and asserted that there is no deviation from the guidelines. Further, there is no pointed objection from users for such arrangement. Therefore, this Authority is inclined to approve the proposal of MOPT in this regard.

(c). With regard to the next tariff item relating to the way leave charges at Mormugao, Vasco da Gama Bay, Head Land Sada/ Bogda, Baina and beyond Vasco Bay upto Port limit, Dabolim/ Chicalim/ Sancoale/ North of Zuari River/ Betul Foreshore proposed rates by MOPT are also calculated at 6% of the market value of the respective lands as assessed by the valuer and hence, it is approved.

The users like SWPL and ZIL have opined that since way leave is given on a common user basis in the same area in tiers over/ below or underground, the users should not be charged separately. The ZIL has stated that in such cases, the total amount of way leave charges applicable to a given area should be divided among all the users of the particular area. In this context, as rightly brought out by MOPT, Note 3 of the Broad Terms and Conditions for issuance of Way leave permission for laying pipelines prescribed in Annex - 1 of the Land Policy Guidelines of 2010 stipulates as follows:

> *"3. Facility compensation or way leave charges shall be paid by all the parties, irrespective of the tiers existing in one way-leave (pedestal)."*

As can be seen, the above stipulation calls for payment of way leave charges by each user. However, the Broad Terms and Conditions do not stipulate anywhere that each user has to pay full way leave charges.

In the context of payment of way leave charges by users, an earlier Order passed by this Authority provides for payment of way leave charges on pro-rata basis. This Authority vide its Order dated 10 August 2004 in respect of Jawaharlal Nehru Port Trust (JNPT) has prescribed formula for calculating way leave charges for pipelines, which is reproduced below:

"For the purpose of way leave charges, the area occupied by single pipelines should be calculated based on the diameter and length of those pipelines. Incase of multi-layer pipeline stacks, the physical area occupied by the multilayer pipeline stacks should be considered and the respective users should be billed for pro-rata area on the basis of the diameter and length of their pipelines passing through that area. With respect to the area shared with road, rails, jetties, etc., the respective users should be billed pro-rata for 50% of the concerned area assuming that they do not have exclusive possession of land and what they have is only 'Right of Way'. As far as underground pipes are concerned if the users establish that the possession of surface area above the underground cross-country pipelines is not physically with them, the area occupied by such pipelines should be counted 50% of the product of diameter and length, for the purpose of levy of way leave charges."

The concern of the users like SWPL and ZIL with regard to levy of full way leave charges in a multi layer pipeline situation is addressed through the said formula because as per the said formula, incase of multi-layer pipeline stacks, the physical area occupied by the multilayer pipeline stacks should be considered and the respective users should be billed for pro-rata area on the basis of the diameter and length of their pipelines passing through that area. The same formula has been prescribed for calculating way leave charges for pipelines in case of Cochin Port Trust (COPT) (Order dated 4 May 2010), New Mangalore Port Trust (NMPT) (Order dated 16 June 2010) and Kolkata Port Trust (KOPT) (Order dated 19 January 2011) in the Scale of Rates of the respective Port Trust. The MOPT has also agreed to amend its proposed note to reflect the position as given above in its Scale of Rates. Therefore the proposed note (1) relating to Way Leave charges is replaced with the above mentioned formula.

(viii). The MOPT has proposed a note that the Licence Fees for water area shall be charged 50% of the licence fee of abutting land. Prescription of licence fee for the water area at 50% of the licence fee of abutting land is in line with the stipulation contained in Clause 6.2.2.3 (k) of the Land Policy Guidelines of 2010 and hence approved.

(ix). The proposed Note 3 of Section III which states that the Scale of Rates shall be escalated by 2% per annum every April, is not seen to be in line with the stipulation contained in the Land Policy Guidelines. The Clause 6.3(1)(c) of the Land Policy Guidelines states only that the rates shall be escalated by 2% per annum till such time the SOR is revised and does not stipulate the time of incidence of such escalation. Therefore, the proposed note is modified as follows:

"The rates provided in the Scale of Rates shall get automatically escalated by 2% per annum after expiry of one year from the effective date of implementation of the Scale of Rates and the escalated rates shall be considered as the prevailing Scheduled Rent for the concerned year. The rate so arrived is rounded off to nearest Rupee."

Incidentally, a similar prescription has been approved by this Authority incase of Kolkata Port Trust (KOPT) Rent Schedule.

In view of the above position, the proposed note 4 to Section III stating that the rates are applicable for the financial year 2012-13 does not appear to be relevant and hence is deleted.

9.1. The Scale of Rates for the estates of MOPT alongwith the conditionalities is attached as **Annex**.

9.2. The Scale of Rates shall come into effect after expiry of 30 days from the date of notification of the Order in the Gazette of India and shall be in force for five years. The approval accorded will automatically lapse thereafter unless specifically extended by this Authority.

(T. S. Balasubramanian)
Member (Finance)

Annex

Part – III
Estate Rentals

"**General Note:**

All the conditions/ notes prescribed in the existing Scale of Rates/ Schedule of License Fees and Lease Rentals shall apply to the extent they are not inconsistent with the conditions prescribed in the Land Policy for Major Ports 2010 announced by the Government on 13 January 2011. Incase of disagreement, the conditions prescribed by the Government in the Land Policy for Major Ports 2010 shall prevail.

I. **LICENSE FEE ON PORT LAND FOR OFFICE BUILDING AND OTHER STRUCTURES**:

Description	**Rate per 10 sqm. or part thereof per calendar month or part thereof (in ₹)**
Licence fee on Port land for maintaining office bldgs. and other structures at:	
(a). Mormugao Harbour and Vasco Da Gama - Bay.	300.00
(b). Head Land Sada	250.00
(c). Baina	500.00
(d). Vasco Da Gama - City	2500.00
(e). Dabolim	300.00

Notes: (a). The approval of the Board is to be obtained in case the land is used for building structures for residential purpose, in the above mentioned areas.

(b). The Licence fee on port land for maintaining office building and other structures at Mormugao Harbour and Vasco Da Gama – Bay as prescribed at (a) would stand revised automatically to ₹500/- per 10 sqm. or part thereof per calendar month or part thereof, immediately upon the MOPT reclaiming the rear seaside at Mormugao Harbour.

(c). The Licence fee on port land for maintaining office building and other structures at Headland Sada as prescribed at (b) above would stand revised to ₹400/- per 10 sqm. or part thereof per calendar month or part thereof, immediately upon shifting of the garbage plant from Headland Sada/ Vasco city.

II. **CHARGES FOR OCCUPATION OF FORESHORELAND**:

Sr. No.	**Description**	**Rate (in ₹)**	**Unit**
1.	For the purpose of carrying out launch/ barge repairs workshop or any other industry including Commercial/ Non-Commercial purpose at Vasco Da Gama bay.	300.00	Per 10 sqm. or part thereof per calendar month or part thereof.
2.	For the purpose of carrying out launch/ barge repairs workshop or any other industry including Commercial/ Non-Commercial purpose beyond Vasco Da Gama bay upto the port limits (Dabolim/ Chicalim/ Sancoale/ North of Zuari River/ Betul Foreshore).	350.00	- do -

Note: The charges for occupation of Foreshore land for the purpose of carrying out launch/ barge repairs workshop or any other industry including Commercial/ Non-Commercial purpose at Vasco Da Gama bay as prescribed at (1) above would stand revised to ₹500/- per 10 sqm. or part thereof per calendar month or part thereof, immediately upon the MOPT reclaiming the rear seaside at Mormugao Harbour.

III. **WAY LEAVE CHARGES**:

Sr. No.	Description	Rate per 10 sqm. or part thereof per calendar month or part thereof (in ₹)
	Way leave charges at:	
(a).	Mormugao, Vasco da Gama Bay.	300.00
(b).	Head Land Sada/ Bogda	250.00
(c).	Baina	500.00
(d).	Beyond Vasco Bay upto Port limit, Dabolim/ Chicalim/ Sancoale/ North of Zuari River/ Betul Foreshore	350.00

Note:

1. For the purpose of way leave charges, the area occupied by single pipelines should be calculated based on the diameter and length of those pipelines. Incase of multi-layer pipeline stacks, the physical area occupied by the multilayer pipeline stacks should be considered and the respective users should be billed for pro-rata area on the basis of the diameter and length of their pipelines passing through that area. With respect to the area shared with road, rails, jetties, etc., the respective users should be billed pro-rata for 50% of the concerned area assuming that they do not have exclusive possession of land and what they have is only 'Right of Way'. As far as underground pipes are concerned if the users establish that the possession of surface area above the underground cross-country pipelines is not physically with them, the area occupied by such pipelines should be counted 50% of the product of diameter and length, for the purpose of levy of way leave charges.

2. The way leave charges at Mormugao, Vasco Da Gama – Bay as prescribed at (a) above would stand revised to ₹500/- per 10 sqm. or part thereof per calendar month or part thereof, immediately upon the MOPT reclaiming the rear seaside at Mormugao Harbour.

3. The way leave charges at Headland Sada/ Bogda as prescribed at (b) above would stand revised automatically to ₹400/- per 10 sqm. or part thereof per calendar month or part thereof, immediately shifting of the garbage plant from Headland Sada/ Vasco city.

4. The Licence Fees for water area shall be charged 50% of the licence fee of abutting land.

5. The rates provided in the Scale of Rates shall get automatically escalated by 2% per annum after expiry of each year from the effective date of implementation of the Scale of Rates and the escalated rates shall be considered as the prevailing Scheduled Rent for the concerned year. The rate so arrived is rounded off to nearest Rupee.

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

F. No.TAMP/8/2012 - MOPT - **Proposal from the Mormugao Port Trust for revision of its estate rentals.**

A joint hearing in this case was held on 16 March 2012 at the Mormugao Port Trust (MOPT) premises. The MOPT made a power point presentation of its proposal. At the joint hearing, MOPT and the concerned users/ user organisations have made the following submissions:

Mormugao Port Trust (MOPT)

(i) Chairman MOPT mentions that the proposal sent by MOPT has since been approved by the MOPT Board of Trustees.

(ii). Chairman MOPT mentioned that Land Committee was constituted as per Land Policy Guidelines.

(iii). Land has been classified into 6 zones for the purpose of valuation.

(iv). Approved land valuer was appointed to value the port land to ascertain the market value.

(v). Market value of the property has been arrived after considering:
- (a). Size of the Property
- (b). Vicinity in which the property is situated.
- (c). Commercial potential of the Port
- (d). Recent sale deeds effected.
- (e). Access to the property.
- (f). Development cost.

(vi). The ready reckoner of the State Government is not updated and the rates as per ready reckoner are quite low.

(vii). The 6% market value is proposed as rent per annum as per the land policy guidelines.

(viii). The MOPT board has approved the proposal for revision of estate rentals.

(ix). In the powerpoint presentation, MOPT also gave a comparison of rate fixed by TAMP in the year 2000. The rates charged by the MOPT now taking into account the escalated rates and the rates proposed for consideration.

South West Port Limited (SWPL)

(i). SWPL mentioned that the rate for lease agreement and the way leave charges should be different and the way leave charges should be lower than the lease rental charges.

(ii). The IMC alongwith SWPL are using the same land as a right way.

<u>Zuari Industries Limited (ZIL)</u>

In view of concurrent usage of some space way leave charges should be lower than the normal rates.

<u>Shipyard Association of Goa (SAG)</u>

Foreshore lease rental rates proposed are too high and need to be revised downwards. The State Govt. rates for foreshore are lower than those proposed by the port.

<u>Sesa Goa Limited (SGL)</u>

Sesa Goa Limited mentioned that the lease rentals proposed by MOPT for foreshore land are high.

2. As decided at the joint hearing, the users were requested to furnish their written comments. Some of the users like SWPL and ZIL have furnished their comments. These comments were forwarded to the MOPT as feedback information. The MOPT has responded on the comments of SWPL and ZIL vide its letter dated 16 April 2012. A summary of comments received from the SWPL and ZIL and the comments of MOPT thereon are tabulated below:

Sl. No.	Comments of users / user organizations	Reply of MOPT
1.	**South West Port Limited (SWPL)**	
(i).	MOPT has proposed lease rentals for Mormugao - Harbour, Vasco Bay @ ₹500.00 per 10 Sq.mtr. per calendar month or part thereof. When the lease of the area is given on rental basis, it is generally for the exclusive / captive use of the lessee.	The issues raised by M/s. SWPL were clarified during the discussions in the meeting of joint hearing held on 16 March 2012. It was brought to the kind notice of Chairperson. TAMP that the proposed lease rentals of ₹500/- per 10m square per month was determined considering 6% return on the market value of land. The market value was assessed by the independent valuer appointed by the committee constituted by the Port. This is as per the Land Policy Guidelines for major ports issued by the Ministry of Shipping. Further kind attention is also invited to para 3 & 5 of annexure I of Land Policy for Major Ports under Caption Broad terms and conditions for issuance of Way Leave permission for laying pipelines which are reproduced here below. "(3) facility compensation or way leave charges shall be paid by all the parties irrespective of tiers existing in one way leave (pedestal). (5) The supervision charges @ 15% on the cost of works (cost of the pipelines and laying) shall be paid by the parties to the Port Trust". As such, there is no merit on the issues
(ii).	MOPT has also proposed Way-Leave charges for Mormugao - Habour, Vasco Bay @ ₹500.00 per 10 Sq.mtr. per calendar per month, i.e. the same as proposed for lease rentals.	
(iii).	While the lease of the area is generally given for the exclusive / captive use, Way-Leave is given for common user basis, i.e. the same area, in the tiers over / below, or even underground, can be given to the other parties and they would be each charged separately the same Way-Leave charge of ₹500.00 per 10 Sq.mtr. per calendar month. (Para-3, Annexure-I - Broad Terms and Conditions for issuance of Way-Leave permission for laying pipelines).	
(iv).	This means that if the Way-Leave is given to three parties for 3 tiers in the same area, each of the 3 parties will be charged @ ₹500.00 per 10 Sq.mtr. per calendar month or part thereof, i.e. ₹1,500.00 overall.	
(v).	In addition to the proposed Way-Leave charges of ₹500.00 per 10 Sq.mtr. per	

	calendar month or part thereof, MOPT will charge Supervision charges @ 15% on the cost of work, as per para-5 of Annexure-I, which states "Supervision charges @ 15% of the cost of work (cost of the pipelines and laying) shall be paid by the parties to the Port Trust". This, in case the cost of each party's work is ₹1.00 Crore, the port will charge each party ₹15.00 lakhs initially.	raised by SWPL. Therefore, the issue raised by SWPL on Way Leave charges cannot be considered in view of Land Policy Guidelines issued by the Ministry of Shipping.
(vi).	This, in effect, will mean that all the parties given the Way-Leave permission for tiers in the same area will each have to pay separately @ ₹500.00 per 10 Sq.mtr. per calendar month, over and above 15% of the cost of work as Supervision charges.	
(vii).	It is thus clear that the proposed increase of ₹500/- per 10 Sq. mtr. per calendar month or part thereof, combined with 15% Supervision charges, is quite exorbitant and is required to be reduced drastically.	
(viii).	Considering all the above mentioned facts, the Way-Leave charges for the areas at Mormugao-Harbour, Vasco-Da-Gama should be even much lower than the existing approved rate of ₹300.00 per 10 Sq.mtr. per calendar month.	
2.	**Zuari Holdings Limited (ZIL)**	
(i).	ZIL is one of the prime users of estate of MOPT. ZIL has various pipelines like Phosphoric acid pipelines, liquid ammonia pipelines laid down in the corridorprovided by MOPT and ZIL is paying the applicable way leave charges for the same. ZIL has been leased area in the estate admeasuring around 6122 sq.m for its phosphoric acid tanks which are adjacent to IOC tanks.	
(ii).	Our first objection relates to the ambiguity of the classification of lands for the revision of the rentals. There is no specific mention of the survey numbers pertaining to classes of land. Zuari has phosphoric acid tanks situated in the Vasco Harbour Bay. This land also forms part of Vasco city. Hence there is no clarity as to which class of land will apply to the said area so as to determine the revised rental.	It is clarified that the Port land have been classified into six zones viz. Mormugao Harbour Vasco Bay, Headland Sada/Bagoda, Baina, Vasco-da-Gama city area, Dobolim and Chicalim, Sancoale, North of Zuari River and Betul. M/s ZIL are apprehensive as regards proposed rates of estate rental to the areas in Vasco city. The MOPT is having commercial building and Port institute on the said land. It may be noted that the said area is not coming under Mormugao Harbour Vasco Bay where the phosphoric acid tanks of ZIL are situated. The other issues of ZIL are clarified herein above. Therefore, the issue raised by ZIL on Way Leave charges cannot be considered in view of Land Policy Guidelines issued by the Ministry of Shipping.
(iii).	Secondly, as rightfully pointed out by the representatives of South-West Port Limited, the total amount of way-leave charges applicable to a particular area are obtained from each and every user having pipelines in the said area, even though these pipelines are laid down in the same corridor and are running parallel over each other. This practice is grossly unfair. In the opinion of the port users, the total amount of the way leave charges applicable to a given area should be divided among all the users of that particular area. This suggestion put forth by the port users was contradicted by the Chairman of MOPT. This anomaly may be	

	rectified as at many places, the pipelines of other port users run parallel to that of Zuari.	
(iv).	The third objection, which requires serious re-consideration pertains to the exorbitant hike of the estate rental relating to area in Vasco City. This proposed hike has been based on the value of the Sale deeds of surrounding properties. This practice adopted by the valuer is erroneous. The valuer should have given due weightage to port users like Zuari and Indian Oil Corporation who have long standing cordial business relations with MOPT of over four decades. Further the contribution of such Corporates to the MPT-exchequer should also be considered.	

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