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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 96

New Delhi,

03 March 2020

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 Paradip Port Trust for fixation of Scale of rates for leasing out of Port land outside the Custom Bond area in favour of Educational Institutions, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/42/2019-PPT

Paradip Port Trust

QUORUM

Applicant

- (i). Shri. T.S. Balasubramanian, Member (Finance)
(ii). Shri. Rajat Sachar, Member (Economic)

ORDER

(Passed on this 20th day of February 2020)

This case relates to the proposal received from Paradip Port Trust (PPT) for fixation of Scale of rates for leasing out of Port land outside the Custom Bond area in favour of Educational Institutions.

2.1. The submissions made by PPT vide its letter No. AD-EST-LAND-I-14/2018/3245 dated 16 August 2019 are summarized below:

- (i). The Ministry of Shipping (MOS) vide its letter dated 14 May 2018 issued a clarification for finalization of SOR for Education Institutions, vide Policy Guidelines for Land Management Clarification, 2018. The point no. 8 of clarification dated 14 May 2018 issued by MOS stipulates the following;

“Para 11.2 (g) and (h) provide for establishment of schools, colleges, hospitals, etc, by local/government bodies on nomination basis at the updated SoR rate and concessional thereto. In case such social and education utilities have to be established by other than local/ government bodies, land can also be allotted on tender-cum-auction basis while fixing up market value of the land as per Para 13, the Land Allotment Committee should consider the rate for land for similar purposes. If the ready reckoner for land for similar purposes is not available, then the rates of the adjacent local authorities for similar purposes could also be considered while fixing the market value.”

- (ii). According to the Land Policy guidelines as well as Clarification issued by the Ministry, the PPT has collected rates for Educational Institutions as per para 13(a) (i), considering the State Government ready reckoner of land values in the area for similar classification/ activities.
- (iii). As per the available records, Sri Aurobinda Pumanga Sikshya Kendra, under Tritol Tahasil, which is about 40 km away from PPT limits, has been allotted land for establishment of school, fixing the market value for school purpose @ ₹. 2 lakhs per acre from the year 1991, which was implemented, vide Order no. 610/ Rev dated 31.3.2018.
- (iv). After giving annual escalation @ 5% every year from 1990-91 on ₹. 2 lakhs, the market value of port land for such activities comes to around ₹. 823500/-

2.2. Based on the above submission, the PPT has requested to approve Scale of Rates for allotment of Port land in favour of Educational Institutions on lease basis outside the custom bond area which is as follows:

“

(₹ in 'per acre')

Sr. no.	Zone	Proposed SOR	
		Market value of the Port land	Reserve price in terms of annual lease rent
1.	Township zone	8,23,500	49,410
2.	Sector-21	8,23,500	49,410

The above rates will be escalated @ 5% per annum and annual ground rent will be collected as per the existing Policy Guidelines for Land Management, 2014 i.e. ₹. 1.00 per sqm/year without any concession on the nominal ground rent.

“

2.3. Alongwith the proposal, the PPT has furnished a copy of the recommendation of the Land Allotment Committee (LAC), the copy of the Board Resolution approving the proposal in reference vide its resolution no. 04/2019-20 dated 27.05.2019 and scale of rates alongwith Conditionalities governing the proposed rate for leasing out of port land outside the custom bond area in favour of Educational Institutions.

3. In accordance with consultative procedure prescribed, a copy of the PPT proposal dated 14 August 2019 was forwarded to the concerned Education Institutions as suggested by PPT vide its letter dated 11 September 2019, vide our letter dated 24 September, seeking their comments. Some of the Educational Institutions have furnished their comments. The said comments was forwarded to PPT as feedback information. The PPT has responded vide its letter dated 16 November 2019.

4. Based on a scrutiny of the PPT proposal, additional information/ clarification was sought from PPT vide our letter dated 07 October 2019. The PPT has responded vide its letter dated 25 October 2019. The information/ clarification sought by us and reply of PPT thereon are as follows:

Sr. no.	Additional information/ Clarification	Reply of PPT
(i).	From the proposal of the port, it is seen that the market value of the land allotted for establishment of school (about 40 kilometres away) in the year 1991, has been taken as base by PPT to determine the market value of the land proposed to be allotted by PPT for educational institutions outside custom bond area of PPT. In this regard, the PPT to clarify/ furnish the following:	
(a).	The reason why the market value of land as in the year 1990-91 has been taken as base as against the latest market value of land, to be explained.	As per the Land Policy Guidelines under Para 13, if the ready reckoner for the land for similar purpose is not available, then the rates of the adjacent localities for similar purpose could be considered while fixing the market value. The state Government has implemented the rate on 31.03.2018 with interest from 1990.
(b).	The basis to adopt an annual escalation factor of 5% to determine the present market value of land as of the year 2019-20, over the market value of land in the year 1990-91, to be explained.	As per the Land Policy Guidelines under Para 13 (c), the Port Trust Board will fix a rate of annual escalation which would not be less than 2%. Accordingly, PPT Board has approved 5% escalation every year from 1990-91, as against the interest charged by the State Govt. for non-port related activities.

5. A joint hearing in the case in reference was held on 16 October 2019 at the PPT premises. The PPT made a brief power point presentation of its proposal. The PPT and the Educational Institutions have made their submissions, at the joint hearing,

6.1. Based on the submissions made by the educational institutions during the joint hearing, the PPT agreed to the request made by the educational institutions and decided to consider only 2% escalation factor from the year 1991-92 to the year 2018-2019 and apply the same 2% escalation for the future period also, instead of considering 5% escalation factor. In view of this, the PPT was requested vide letter dated 25 October 2019 to furnish a revised Scale of Rates after incorporating the revised rental and escalation factor with recommendation of LAC and approval of the Board of PPT.

6.2. After reminder letter dated 26 December 2019, the PPT vide its email dated 27 December 2019 has responded.

Based on the recommendation of LAC, the Board of Trustees of PPT in their meeting held on 13 December 2019 has resolved to approve Market value of Port land for Educational Institutions and lease rental as given below:

(Amount in ₹ per acre)

Sl. no.	Zone	Proposed SOR	
		Market Value of the Port Land	Reserved Price in terms of annual lease Rent
1	Town Ship	3,55,170	21,310
2	Sector-21	3,55,170	21,310

The above rates will be escalated @ 2% per annum on notification by the TAMP and annual ground rent will be collected as per the existing Policy Guidelines for Land Management, 2014 i.e. 1.00 per Sqm/year, without any concession on the nominal ground rent.

6.3. Thus, the PPT has sought approval of the Scale of rates as recommended by the Land Allotment Committee and approval by the Board, for allotment of Port land in favour of Educational Institutions on lease basis outside the custom bond area at the earliest.

7. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the arguments made during the joint hearing will be sent separately to the port and 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). Based on the stipulations contained in the Land Policy Guidelines, 2014 and the clarification issued by the Ministry of Shipping (MOS) vide Policy Guidelines for Land Management Clarification, 2018, in May 2018, the Paradip Port Trust (PPT) has come up with a proposal for fixation of lease rent for the port lands outside Custom bound area i.e. in the Township Zone and Sector – 21 Zone, which are leased out to Educational Institutions. The proposal of the port has the recommendation of Land Allotment Committee and approval of its Board of Trustees.
- (ii). The PPT has filed its proposal in August 2019. The PPT has furnished the additional information/ clarification sought by us by fag end of December 2019. The revised proposal of PPT dated 27 December 2019 alongwith the information/ clarification furnished by the PPT during the processing of the case, is being considered in this analysis.
- (iii). As per clause 13(a) read with clause 11.2(e) of the Land Policy Guidelines 2014, a Land Allotment Committee (LAC) constituted by the Port Trust Board consisting of Deputy Chairman of the Port, and Heads of Departments of Finance, Estate and Traffic shall determine the market value of land as per the methodology prescribed in clause 13(a). In the case of PPT, a LAC has been constituted under the Chairmanship of Chairman and consisting of Secretary, F.A. & C.A.O. and Traffic Manager as Members of the Committee.
- (iv). (a). This Authority is mandated to follow the Land Policy Guidelines issued by the Government from time to time for the purpose of determining lease rentals for the lands belonging to the Port Trusts. The Ministry of Shipping in the Government of India has announced Land Policy Guidelines for Major Ports, 2014 in January 2014 which has come into effect from 2 January 2014. Subsequently, the Ministry of Shipping has issued amended Land

Policy Guidelines, 2014 under Section of the MPT Act, 1963 for implementation with effect from 17 July 2015. Thereafter, the MOS has issued Clarifications on Policy Guidelines for Land Management, 2015, on 14 May 2018. Clarification no. 8 deals with allotment of land outside custom bond area for establishment of schools, colleges, hospitals etc., by other than local/ government bodies.

- (b). As per the said clarification, in cases where social and education utilities viz., schools, colleges, hospitals, etc., have to be established by other than local/ government bodies, land can be allotted on tender-cum-auction basis and that while fixing up market value of the land as per Para 13, the Land Allotment Committee should consider the rate for land for similar purposes and that if the ready reckoner for land for similar purposes is not available, then the rates of the adjacent local authorities for similar purposes could also be considered while fixing the market value.
- (c). Thus, as clarified by the MOS, in the Clarification to the Land Policy Guidelines, the PPT has considered the State Government Ready Reckoner of land values in the area for similar classification/ activities.
- (d). In this connection, based on the records as available with concerned Tahsildar and Sub-Registrar, the PPT is reported to have considered the rate of the adjacent locality for similar purpose, while fixing the market value of the land. Thus, from the proposal of the port, it is seen that the market value of the land allotted for establishment of a school (about 40 kilometres away) in the year 1991, has been taken as base by PPT to determine the market value of the land proposed to be allotted by PPT for educational institutions outside custom bond area of PPT.
- (e). As regards the reason to consider the market value of land as in the year 1990-91 as base as against the latest market value of land, the port has stated that the State Government has implemented the rate on 31 March 2018 with effect from the year 1990.
- (f). Thus, the market value of the land allotted for establishment of a school in the year 1991 at ₹ 2 lakhs per acre has been escalated by PPT @ 2% every year from the year 1990-91 onwards, so as to determine the current market value of the land at ₹ 3,55,170/- per acre for the year 2019-20.
- (g). Clause 13(b) of the guidelines, interalia, stipulates that Reserve Price in terms of annual rent would be arrived, as a percentage of latest market value of land and the percentage should not be less than 6% which is to be fixed by the Port Trust Board. Accordingly, by applying a factor of 6% on the market value of the land at ₹ 3,55,170/- per acre for the year 2019-20, the lease rent has been worked out by the PPT at ₹ 21310/- per acre per annum.
- (v). Based on the above position, the LAC has recommended to fix the market value for the land to be allotted in the Township Zone and Sector – 21 Zone for Educational Institutions at ₹ 3,55,170/- per acre and the lease rent at ₹ 21310/- per acre per annum. The Board of Trustees of PPT has approved the recommendation of the LAC and has approved the market value of the land at ₹ 3,55,170/- per acre and the lease rent at ₹ 21,310/- per acre per annum.

Since the lease rent as recommended by the LAC has the approval of the Board of Trustees of PPT, this Authority is inclined to prescribe the reserve price in terms of annual lease rent for the land at ₹ 21,310/- per acre per annum for the land to be allotted in the Township Zone and Sector – 21 Zone for Educational Institutions. Since Clause 13(c) of the amended Land Policy Guidelines issued in July 2015

requires this Authority to notify only the Scale of Rates, the market value is not notified.

- (vi). The PPT is seen to have proposed various definitions/ conditions/ notes in the proposed draft Scale of Rates. The said definitions/ conditions/ notes are seen to be same as the definitions/ conditions/ notes approved in the SOR for allotment of Port land outside the custom bond area on lease basis for non-port related activities at PPT vide Order no. TAMP/53/2014-PPT dated 15 May 2015 and Order no. TAMP/36/2017-PPT dated 21 July 2017. Hence, the proposed definitions/ conditions/ notes are approved.
- (vii). The PPT in the Scale of Rates has proposed a note to the effect that the reserve price in terms of annual lease rent shall bear an escalation factor of 2% every year. In this regard, it is relevant here to mention that Clause 18(c) of the Land Policy Guidelines of 2014 gives flexibility to the ports to fix annual escalation which would not be less than 2%. Accordingly, the PPT has proposed 2% annual escalation. Since the annual escalation rate of 2% is approved by the PPT Board of Trustees and is as per the provision of the Land Policy guidelines of 2014, the proposed rate of 2% annual escalation is approved.
- (viii). Clause 13 (C) of the amended Land Policy Guidelines, 2014 stipulates that the rates will be revised once in every five years by this Authority. Accordingly, the port in the Rent Schedule, has proposed a note to the effect that the reserve price in terms of annual lease rent will be effective after expiry of 30 days from the date of notification of the Order in the Gazette of India and shall remain in force for a period of five years, which is approved.
- (ix). Since the reserve price in terms of annual lease rent has been proposed by the port and approved by this Authority, the levy of ₹. 1/- per sq.m/year, proposed by the port which is relevant for allotment of land on upfront basis, is not found relevant and hence not prescribed.

9.1. In the result, and for the reasons given above, and based on collective application of mind, the Scale of Rates for allotment of Port land on lease basis outside Custom bond area in the Township Zone and Sector 21 Zone in favour of Educational Institutions as attached as **Annex**, is approved.

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

(T.S. Balasubramanian)
Member (Finance)

PARADIP PORT TRUST

SCALE OF RATES (SOR) FOR LEASING OUT OF PORT LAND OUTSIDE THE CUSTOM
BOND AREA IN FAVOUR OF EDUCATIONAL INSTITUTIONS

1. SHORT TITLE, COMMENCEMENT AND APPLICATION

- a) This may be called” Scale of Rates (SOR) for leasing out of Port land outside the custom bond area in favour of Educational Institutions.
- b) The same shall come into force on such date as approved by TAMP.
- c) It applies to the areas located outside the custom bond area in Township zone and Sector 21 Zone for a period of five years from the date it comes into effect.

2. DEFINITION

- a) **“Board”**, in relation to a Port means the Board of Trustees constituted under Major Port Trust Act, 1963 for the Port.
- b) **“TAMP”**, means the Tariff Authority for Major Ports constituted under section 47-A of Major Port Trust Act, 1963.
- c) **“Chairman”**, means the Chairman of the Board and includes the person appointed to act in his place under section 14 of Major Port Trust Act, 1963.
- d) **“Land”**, shall have the meaning assigned to it as in Section 2 (k) of Major Port Trust Act, 1963.
- e) **“Lease”**, shall have the meaning assigned to it as in Section 105 of the Transfer or Property Act, 1982 i.e., “transfer of a right to enjoy immovable property, made for a certain time, expressly provided for, in consideration of a price paid or promised, or of money to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms”.
- f) **“License”**, shall have the same meaning assigned to it as in Section 52 of the Indian Easements Act, 1882 i.e., “a right granted to another person by the grantor, to do or continue to do upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property.
- g) **“Upfront basis”**, means allotment of land on lease basis on payment of one time upfront payment for the entire lease period and the nominal lease rent approved by the Boar from time to time.
- h) **“Premium basis”**, means allotment of land on annual lease basis on payment of annual lease rent with escalation approved by the Board from time to time.
- i) **“Registration charges”**, means the charges to be borne by the lessee/licensee towards the costs of preparing, stamping and registering the lease/license agreement and also the cost of a counterpart or a copy if required.
- j) **“Document preparation charges”**, means one time charges to be paid by the lessee/ licensee to the Board for preparation of lease/license agreement.
- k) **“Security Deposit”**, means refundable amount to be kept with the Board by the lessee/ licensee for the entire lease/license period subject to fulfilling all the agreed terms and conditions.

- l) **“GST”** means a statutory tax levied by the Government for goods and services but actually borne by the customers. It is categorised under Indirect Tax and came into existence under the GST Act.
- m) **“Penalty”**, means the charges levied by the Board for violation of terms and conditions of allotment and wrongful use and occupation of allotted premises.

3. SCALE OF RATES (SoR) FOR ALLOTMENT OF PORT LAND IN FAVOUR OF EDUCATIONAL INSTITUTIONS:

- 3.1. Scale of Rates for leasing out of Port land outside the custom bond area in favour of Educational Institutions.

(amount in ₹ 'per acre')

Zone	SOR
	Reserve price in terms of annual lease rent
Township Zone	21,310/-
Sector 21	21,310/-

4. Terms and Conditions

4.1. Due date Payment

The charges to be remitted within a period of one month from the date of issue of demand note.

4.2. Mode of Payment

The payment should be made through RTGS/NEFT/DD in favour of F.A.& C.A.O., PPT.

4.3. Interest on delayed payment

Any arrears of rent or other money accruing to or in favour of the Paradip Port Trust or from the lessee shall be recoverable as a public demand with interest @ 12% per annum without prejudice to any action that may be taken by the Port to recover by a suit in the court having jurisdiction over the area.

4.4. Counting date of allotment

The allotment will be counted from the date of issue of allotment order.

4.5. Non-utilisation of allotted land

If the allotted land is not utilized for the purpose for which it has allotted within a period of 18 (eighteen) months from the date of possession, the allotted land will be cancelled and all the payments made for such allotment will be forfeited.

4.6. Penalty

- a) If the lessee breaches / violates any provisions of lease agreement, the Board would reserve the right to impose the appropriate penalty or cancel the lease depending upon the nature and magnitude of such violation. In case of cancellation, no refund will be made.
- b) If the lessee/licensee continues unauthorisedly beyond the approved period, will be liable to pay compensation for wrongful use and occupation at three times of the Scale of Rates in force till the vacant possession is obtained.

4.7. Observation of rules and regulations of Paradip Port Trust

The lessee /licensee shall observe all provisions of laws, rules, bye-laws, regulations, orders and notification relating to the Port issued by the Central Government, Board, Chairman or any other Competent Authority from time to time and shall pay the rates approved by the Board from time to time.

4.8. Refund of proportionate value in case of resumption of the allotted premises before expiry of lease in Port interest

The lessee/ licensee is eligible to get refund on prorated basis for the left out period of lease/license without interest if the land is resumed before the expiry of allotment period for Port purpose. In case of rehabilitation in other location at the discretion of the Port, the lessee/licensee has to pay differential amount on prorated basis for the left out period as per the prevailing SOR.

- 4.9.** All the allotments of Port land and buildings are governed by Paradip Port Trust Immovable Properties (Lands and Houses) Leasing and Licensing Regulations, 1975 and Land Policy Guidelines issued by the Ministry of Shipping, Govt. of India from time to time. Any provisions of the above which has not been specifically spelt out in the above terms and conditions are deemed to be covered.
- 4.10.** The reserve price in terms of annual lease rent prescribed above shall bear an escalation factor of 2% every year.
- 4.11.** The reserve price in terms of annual lease rent prescribed above will be effective after expiry of 30 days from the date of notification of the Order in the Gazette of India and may remain in force for a period of five years.
- 4.12.** In case of any inconsistency in the definitions/ conditions/ notes in the Scale of Rates vis-à-vis the amended Policy Guidelines for Land Management, 2014, the provisions contained in the amended Policy Guidelines for Land Management, 2014 would prevail.

**SUMMARY OF THE COMMENTS RECEIVED FROM EDUCATION INSTITUTIONS AND ARGUMENTS
MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY.**

F. No. TAMP/42/2019-PPT	Proposal received from Paradip Port Trust (PPT) for finalization of Scale of rates for leasing out of Port land outside the Custom Bond area in favour of Education Institutions.
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A summary of the comments received from the Educational Institutions and the comments of PPT thereon are tabulated below:

Sr. no	Comments of Education Institutions	Comments of PPT
1.	Saraswati Sishu Vidya Mandir	
(i).	Considering small amount of income earned by the School, the school is not in a position to pay the proposed scale of rate imposed by port for using Port land area on lease basis. It is very high. It is requested that the proposed SOR be reduced from 5% to within 2% or to be as per previous Scale of rate.	As per the decision in meeting held on 16 October 2019, the revised SOR is under examination / consideration of PPT Board and after approval of the Board, the PPT will send the revised SOR to TAMP for approval / notification.
2.	DAV Public School	
	It is requested to reduce the annual escalation rate to 2% for education institution as per Para 13(a)(i) of land policy guidelines, so that, School can spend the school fund for the benefit of the student's community by providing them better facility for educational development and growth.	As per the decision in meeting held on 16 October 2019, the revised SOR is under examination / consideration of PPT Board and after approval of the Board, the PPT will send the revised SOR to TAMP for approval / notification.
	Additional comments of DAV Public School	
1.	The School at Paradip imparts quality education to the students of the employees of Paradip Port and the children of the periphery as well, whose parents are directly or indirectly attached to the Port.	DAV School was allotted with building on license basis for educational purpose on concessional rate. Hence, it will be dealt with separately after fixing of SOR for building and notification of SOR for the land for School purposes.
2.	When the lease rent is very high, DAV is not able to pay good salary to the staff members and retain them. DAV cannot curtail the payment of the staff.	
3.	The lease rent what DAV is paying at present to the Port Trust are fully borne by the parents of the School and is creating a huge gap between Revenue and Expenditure of the School.	
4.	Many Schools in the Paradip Port area are paying very less lease rent, whereas the rent paid by DAV Paradip port is very high.	
	In view of the above, it is requested to allow payment of only a nominal rent and allot additional land of at least 1 acre with a condition to develop more infrastructure to provide education to the children living in the vicinity of the Paradip Port.	

2. A joint hearing in the case in reference was held on 16 October 2019 at the PPT premises. The PPT has made a brief power point presentation of its proposal. At the joint hearing, the PPT and the users have made the following submissions:

PPT

- (i). The MOS, in May 2018 issued a clarification for finalization of SOR for Education Institutions. The clarification provides that in case social and education utilities have to be established by other than local/ government bodies, the Land Allotment Committee should consider the rate for land for similar purposes while fixing market value of land and if the ready reckoner for land for similar purposes is not available, then the rates of the adjacent local authorities for similar purposes could also be considered while fixing the market value.
- (ii). As per the available records, Sri Aurobinda Pumanga Sikshya Kendra, under Tritol Tahasil, which is about 40 km away from PPT limits, has been allotted in the year 2018, for establishment of school, fixing the market value for school purpose @ ₹ 2 lakhs per acre from the year 1991.
- (iii). After giving annual escalation @ 5% every year from 1990-91 on ₹ 2 lakhs, the market value of port land for such activities has been worked out to around ₹ 823500/- per acre. The Board of Trustees of PPT has approved and recommended the said market value of land at ₹ 823500/- per acre.
- (iv). The reserve price works out to ₹ 49410/- per acrea per annum. The said rental will be subject to 5% escalation per annum.
- (v). Out of the total land estate of the port at Paradip, the schools occupy a very small fraction of land area. We will accede to the request made by the Educational institutions.

Saraswati Sisu Vidya Mandir

- (i). We request the Port to consider an escalation factor of only 2% instead of 5% to determine the rent as of the year 2018. We also request to consider only 2% escalation for future.

DAV Public School

- (i). We also request the Port to consider only 2% escalation factor to determine the rent as of the year 2018, instead of 5%. For future also, only 2% escalation be considered.
