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Tariff Authority for Major Ports

G No. 182

New Delhi,

17 June 2014

NOTIFICATION

In exercise of the powers conferred by Section 48, 49 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from the Paradip Port Trust (PPT) for re-fixation of Reference tariff for a new iron ore berth to be developed for handling of iron ore exports at Paradip Port on BOT basis, under the Guidelines for Determination of Tariff for Port Projects at Major Ports, 2013, which were notified vide Notification No.TAMP/18/2013-Misc. dated 30 September 2013 vide Gazette No. 254, as in the Order appended hereto.

(T.S. Balasubramanian)
Member(Finance)

Tariff Authority for Major Ports

(No. TAMP/28/2014-PPT)

Paradip Port Trust

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Applicant

QUORUM:

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

O R D E R

(Passed on this 05th day of June 2014)

This case relates to the proposal received from the Paradip Port Trust (PPT) for re-fixation of Reference tariff for a new iron ore berth to be developed for handling of iron ore exports at Paradip Port on BOT basis, under the Guidelines for Determination of Tariff for Port Projects at Major Ports, 2013.

1.2 This Authority has passed an order no. TAMP/18/2008-PPT dated 14 July 2008 fixing upfront tariff for a deep draught iron ore berth and a deep draught coal berth to be developed at the Paradip Port Trust (PPT), in pursuance of the guidelines for upfront tariff setting for PPP projects at Major Ports, 2008. This Order was notified in the Gazette of India on 16 August 2008 vide Gazette no. 133.

2.1. The Ministry of Shipping (MOS) vide its letter No.PR-14019/16/2012-PG dated 31 July 2013 has issued 'Guidelines for Determination of Tariff for Projects at Major Ports, 2013' under Section 111 of the Major Port Trusts Act, 1963 on 31 July 2013. In compliance of the policy directives issued by the (MOS) under Section 111 of the MPT Act, 1963, the said Guidelines were notified vide Notification No. TAMP/18/2013-Misc. in the Gazette of India on 8 August 2013, vide Gazette no. 214. The said Guidelines have come into effect from 31 July 2013.

2.2. Subsequently, the MOS issued revised Guidelines for Determination of Tariff for Projects at Major Ports, 2013 under Section 111 of the Major Port Trusts Act and made it effective from 9 September 2013. The said revised guidelines were notified in the Gazette of India on 30 September 2013 vide Gazette No.254.

3.1. In pursuance of the Guidelines for Determination of Tariff for Port Projects at Major Ports, 2013 and based on a proposal filed by the PPT in August 2013, this Authority vide its Order no. TAMP/37/2013-PPT dated 30 August 2013 has fixed Reference tariff for a Deep Draught Iron Ore berth of 10 MMTPA Capacity to be developed on BOT basis at PPT. This Order has been notified in the Gazette of India on 20 September 2013 vide Gazette no. 245.

3.2. It is noteworthy that the Reference tariff so fixed in August 2013 was based on the upfront tariff rates of iron ore project at PPT approved in the year 2008 (as mentioned in the initial para above) after applying the due escalation factor.

3.3. Subsequently, this Authority has passed an Addendum dated 5 December 2013 to the Order dated 30 August 2013, to prescribe some relevant clauses as stipulated in the Guidelines of 2013, in the PPT Order also. The Addendum was notified in the Gazette of India on 26 December 2013 vide Gazette no. 333.

4. In this backdrop, the PPT under cover of its letter dated 16 May 2014 has filed a proposal for re-fixation of Reference tariff for a new iron ore berth to be developed for handling of iron ore exports at Paradip Port on BOT basis, under the Guidelines for Determination of Tariff for Port Projects at Major Ports, 2013. The main points made by the PPT in its proposal are given below:

- (i). The notification for upfront tariff for the 'Deep draught Iron Ore berth on BOT basis at Paradip Port' was issued on 16 August 2008.
- (ii). These tariff were indexed vide case No. TAMP/37/2013-PPT dated 30 August 2013 and the project was put to retender.

- (iii). However, it has now been decided to discharge the present tender and re-invite bids from the RFQ stage. RFQ for the same will be issued in May 2014. As RFP documents for the project should contain proposed tariff for the project indexed to 2014 for various services, the Tariff Proposal has been prepared based on "Revised Guidelines for determination of Tariff for projects at Major Ports, 2013 notified on 30 September 2013.
 - (iv). The tariffs have been indexed by 31.58% based on approved tariff of 2008 (i.e. 4.3% based on approved tariff of 2013).
- 4.2. The PPT has furnished the 'Reference Tariff Schedule for Iron Ore Terminal and the Performance Standards along with its proposal.
5. With reference to the totality of the information collected, the following points emerge for consideration:
- (i). Based on the upfront tariff fixed for an iron ore berth at PPT in July 2008, this Authority vide its Order of August 2013 has fixed Reference tariff for the iron ore facility at the PPT. The Reference tariff so fixed was after applying an escalation factor of 26.15% (being the applicable indexation factor for the year 2013 to be applied for tariff with base WPI as on 1 January 2008).
 - (ii). On the ground that the PPT has decided to discharge its tender and re-invite bids and that since the RFP documents for the project should contain proposed tariff for the project indexed to 2014 for various services, the PPT has submitted the proposal in reference.
 - (iii). Clause 2.8 of the 2013 Guidelines stipulates that Bids for award of PPP projects will be invited and evaluated on the basis of Reference Tariff prevalent at that time. Since the PPT proposes to invite bids during the year 2014, there appears to be a need to prescribe Reference tariff as applicable for the year 2014.
 - (iv). The Revised Guidelines of 2013 stipulate that while adopting the Reference tariff, the tariff set under the Tariff Guidelines of 2008 shall be escalated to the extent of 60% of WPI per annum, as provided in the said guidelines for the period between 1st January of the year as prescribed in the relevant tariff order of this Authority under 2008 guidelines and 1st January of the subsequent relevant year when the Reference Tariff for the particular project in question is being notified.
 - (v). As stated earlier, the upfront tariff for the PPT iron ore berth was notified in July 2008. The Upfront Tariff Schedule of PPT specifically states that the base year of Wholesale Price Index (WPI) for indexation in the reference tariff rates approved in the said Order will be 1 January 2008. Accordingly, the PPT has applied the indexation factor of 31.58% on the tariff caps approved for the PPT iron ore berth vide Order of July 2008. This indexation factor is seen to be the indexation factor communicated by us to all the Major Port Trusts to be applicable for reference tariff fixed in the year 2014 with base WPI as on 1 January 2008. The indexed reference tariff for the iron ore berth as derived by the PPT based on the indexation factor of 31.58%, as applicable for the year 2014, is found to be in order.
 - (vi). In the proposed reference tariff schedule, the PPT has not proposed the definitions and the general terms and conditions forming part of the PPT Reference tariff Schedule. Further, the various conditionalities governing the levy of cargo handling charges, storage charges and berth hire charges are also not seen to have been proposed by the PPT. In this regard, it is relevant here to mention that the upfront tariff schedule for the iron ore berth at PPT approved in July 2008 did not prescribe the definitions, general terms and conditions and the various conditionalities governing the levy of cargo handling charges, storage charges and berth hire charges, which is generally prescribed in the Upfront tariff Schedule of the various major port trusts. Therefore, definitions, general terms

and conditions and all other conditionalities governing the levy of cargo handling charges, storage charges and berth hire charges forming part of the Upfront tariff Schedule for iron ore handling at the Mormugao Port Trust (MOPT) (Order No. TAMP/60/2009-MOPT dated 4 May 2010) are suitably prescribed in the Reference tariff Schedule of PPT also.

- (vii). Clause 2.2 of the revised tariff guidelines of 2013 requires this Authority to prescribe the Reference Tariff along with the Performance Standards. The performance standards and the conditionalities governing the performance standards proposed by PPT are found to be similar to those notified by this Authority vide Order dated 30 August 2013. Therefore, the performance standards and the conditionalities as proposed now by PPT is notified without any modification.
- (viii). The note proposed by PPT governing the indexation of reference tariff for future period is with reference to 1 January 2013. Since the reference tariff is fixed in the year 2014 duly updated as of 31 December 2013, as proposed by PPT, indexation for future period will be with reference to 1 January 2014. Therefore, the following General note is prescribed in the Reference tariff Schedule of PPT for automatic adjustment in tariff caps for every subsequent years:

“ The tariff caps will be indexed to inflation but only to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2014 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 31st March of the following year.”

6.1. Subject to above, the Reference Tariff Schedule proposed by the Port has been modified. The modified Reference Tariff Schedule is attached as **Annex – I** and the Performance Standards for the Iron ore Berth as proposed by the port, is attached as **Annex – II**.

6.2. In the result, and for the reasons given above and based on a collective application of mind, the modified Reference Tariff Schedule for the Iron ore Berth at PPT is approved and notified along with the Performance Standards.

6.3. As per clause 2.5 of the Revised Tariff Guidelines 2013, the Reference Tariff and Performance Standards notified by this Authority shall be mentioned in the bid document and subsequently in the Concession Agreement in respect of PPP Projects. Accordingly, the PPT is advised to incorporate the Reference Tariff and Performance Standards, in the bid document and subsequently in the Concession Agreement in respect of PPP Projects.

7.1. From the date of Commercial Operation (CoD) till 31st March of the same financial year, the tariff would be limited to the indexed Reference Tariff relevant to that year, which would be the ceiling. The aforesaid Reference Tariff shall be automatically revised every year based on an indexation as provided in para 2.2 of the tariff guidelines of 2013 which will be applicable for the entire concession period.

However, the PPP operator would be free to propose a tariff along with Performance Standards (the “Performance Linked Tariff”) from the second year of operation onwards, over and above the indexed Reference Tariff for the relevant financial year, at least 90 days before the 1st April of the ensuing financial year. Such Performance Linked Tariff shall not be higher than 15% over and above the indexed Reference Tariff for that relevant financial year (and this will be the Tariff Cap). The Performance Linked Tariff would come into force from the first day of the following financial year and would be applicable for the entire financial year.

7.2. The proposal shall be submitted to this Authority along with a certificate from the independent engineer appointed under the Concession Agreement of the Project indicating the achievement of Performance Standards in the previous 12 months as incorporated in the Concession Agreement or for the actual number of months of operation in the first year of operation, as the case may be.

7.3. On receipt of the proposal, this Authority will seek the views of the PPT on the achievement of Performance Standards as outlined in para 5 of the tariff guidelines of 2013, within 7 days of receipt.

7.4. In the event of Operator not achieving the Performance Standards as incorporated in the Concession Agreement in previous 12 months, this Authority will not consider the proposal for notifying the Performance Linked Tariff for the ensuing financial year and the Operator shall be entitled to only the indexed Reference Tariff applicable for the ensuing financial year.

7.5. After considering the views of the PPT, if this Authority is satisfied that the Performance Standards as incorporated in the Concession Agreement have been achieved, it shall notify the performance linked tariff by 15th of March to be effective from 1st of April of the ensuing financial year.

7.6. While considering the proposal for Performance Linked Tariff, this Authority will look into the Performance Standards and its adherence by the Operator. This Authority will decide on the acceptance or rejection of the Performance Linked Tariff proposal based on the achievement or otherwise of the Performance Standards by the operator. Determination of indexed Reference Tariff and Performance Linked Tariff will follow the illustration shown in the Appendix attached to the tariff guidelines of 2013.

7.7. From the third year of operation, the Performance Linked Tariff proposal from the PPP operator shall be automatically notified by this Authority subject to the achievement of Performance Standards in the previous 12 months period as certified by the Independent Engineer. The PPP operator, for the Performance Linked Tariff from the third year onwards, will submit the Performance Linked Tariff proposal along with the achievement certificate from the independent engineer by 1st March and this Authority shall notify by 20th March, the Performance Linked Tariff to be effective from the ensuing financial year.

7.8. In the event any user has any grievance regarding non-achievement by the PPP operator of the Performance Standards as notified by this Authority, he may prefer a representation to this Authority which, thereafter, shall conduct an inquiry into the representation and give its finding PPT. The PPT will be bound to take necessary action on the findings as per the provisions of the respective Concession Agreement.

7.9. Within 15 (fifteen) days of the signing of the Concession Agreement, the concerned operator will forward the Concession Agreement to this Authority which will host it on its website.

7.10. The PPP operator shall furnish to this Authority quarterly reports on cargo traffic, ship berth day output, average turnaround time of ships, average pre-berthing waiting time as well as the tariff realized for each berth. The quarterly reports shall be submitted by the PPP operator within a month following the end of each quarter. Any other information which is required by this Authority shall also be furnished to them from time to time.

7.11. This Authority shall publish on its website all such information received from PPP operator. However, this Authority shall consider a request from any PPP operator about not publishing certain data/ information furnished which is commercially sensitive. Such requests should be accompanied by detailed justification regarding the commercial sensitiveness of the data/ information in question and the likely adverse impact on their revenue/ operation of upon publication. The decision of this Authority in this regard would be final.

(T.S. Balasubramanian)
Member (Finance)

Annex – I

Reference Tariff Schedule for the New Iron Ore berth to be developed for handling Iron Ore exports at Paradip Port on BOT Basis.

1.1 DEFINITIONS:

In this Scale of Rates unless the context otherwise requires, the following definition shall apply.

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

1.2 GENERAL TERMS AND CONDITIONS:

- (i). The status of the vessel, as borne out by its certification by the Customs or the Director General of Shipping, is the relevant factor to decide whether vessel is ‘coastal’ or ‘foreign-going’ for the purpose of levy of vessel related charges; and, the nature of cargo or its origin will not be of any relevance for this purpose.
- (ii).
 - (a). The vessel related charges for all coastal vessels should not exceed 60% of the corresponding charges for other vessels.
 - (b). The cargo related charges for all coastal cargo other than thermal coal should not exceed 60% of the normal cargo related charges.
 - (c). In case of cargo related charges, the concessional rates should be levied on all the relevant handling charges for ship-shore transfer and transfer from / to quay to/ from storage yard including wharfage.
 - (d). Cargo from a foreign port, which reaches an Indian Port ‘A’ for subsequent transshipment to Indian Port ‘B’ will be, levied the concessional charges relevant for its coastal voyage. In other words, cargo from / to Indian ports carried by vessel permitted to undertake coastal voyage will qualify for the concession.
- (iii). Interest on delayed payments / refunds.
 - (a). The User shall pay penal interest on delayed payments under this Scale of Rates. Likewise, the terminal operator shall pay penal interest on delayed refunds.
 - (b). The rate of penal interest will be 2% above the Prime Lending Rate of the State Bank of India.
 - (c). The delay in refunds will be counted only 20 days from the date of completion of services or on production of all the documents required from the Users, whichever is later.
 - (d). The delay in payment 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 operator may, if they so desire, charge lower rates and/or allow higher rebates and discounts.
- (b). The operator may also, if they so desire rationalize the prescribed conditionalities governing the application of rates prescribed in the Scale of Rates if such rationalisation gives relief to the users in the rate per unit and the unit rates prescribed in the Scale of Rates do not exceed the ceiling level.
- (c). The operator should notify the public such lower rates and/ or rationalisation of the conditionalites governing the application of such rates and continue to notify the public any further charges in such lower rates and/or in the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rate notified by the TAMP.
- (vi). Users will not be required to pay charges for delays beyond reasonable level attributable to the operator.

2. CARGO HANDLING CHARGES:

The cargo handling charges at the New Iron Ore berth for handling Iron Ore Exports at Paradip Port Trust shall be payable on the manifested cargo directly by the importer of cargo at the rates specified below:

Sl. No.	Commodity	Unit	Rate in ₹
1.	Iron Ore handling charges (all types)	MT	206.58

Note:

The above rate is the composite rate for unloading the Iron Ore from the railway wagon, conveying to stack yard, storage at the stack yard upto free period of 18 days after the time of unloading the iron ore from railway wagon, reclaiming from stack yard and loading on to the ship and all other miscellaneous services provided.

3. STORAGE CHARGES:

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

(₹ per MT per day)

Sl. No.	Commodity	Rate for first 5 days for the balance cargo remaining after the free period	Rate for 6th day to 10th day for the balance cargo	Rate for 11th onwards for the balance cargo
1.	Iron Ore (all types)	15.79	31.58	63.16

Notes:

- (i). For the purpose of calculation of free period Customs notified holidays and Terminal's non- working days shall be excluded.
- (ii). Free period for import cargo shall be reckoned from the day following the day of completion of final discharge from the vessel.

- (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.

4. BERTH HIRE CHARGES:

The Berth Hire charges payable by masters/owners/agents for the vessel shall be as per rates below:

Sl. No.	Vessels	Rate per GRT per hour or part thereof (₹)	
		Foreign Going Vessel	Coastal Vessel
1.	All Vessels	1.13	0.68

Notes:

- berth.
- (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). In case vessel idles due to breakdown or non availability of the shore based facilities of the operator, or any other reasons attributable to operator, rebate equivalent to berth hire charges payable to the Paradip Port Trust accrued during the period of idling of vessel shall be allowed by the 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."

5. GENERAL NOTE:

The Reference Tariffs will be indexed to inflation but only to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2014 and 1 January of the relevant year. Such automatic adjustment of Reference Tariffs 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.

Annex - II

Schedule of Performance Standards for the New Iron Ore berth to be developed for handling Iron Ore exports at Paradip Port on BOT Basis.

1. Gross Berth Output

The parameter deals with the productivity of the terminal (Gross Berth Output) for different types of cargo. In case of iron ore, the capability of the terminal (mechanization, method of handling) and parcel size will determine the Gross Berth Output. Higher terminal capability and greater parcel size will lead to high productivity. The Gross Berth Output shall be calculated as the total cargo handled to the ship during a month divided by the time spent by the ship at the terminal multiplied by number of working days of ships in that month at that terminal. While determining the number of working days from the ship hours, the berth allowance of 4 hours shall be subtracted from the total hours.

The norm for Gross Berth Output for Iron Ore will be 60,000 Tons/day. Weightage in case of shortfall in meeting the prescribed performance standard will be 70%.

2. Transit Storage Dwell Time:

Bulk Cargo:

The Transit Storage Dwell Time for iron ore shall be calculated, as half of average parcel size of above cargo vessels in a month divided by average disposal of cargo from the port per day as per the following methodology:

Average disposal of Cargo per day (A) = (OB+Received/Despatched-CB)/No. of days

OB = Opening Balance, CB = Closing Balance.

Average Parcel Sizes (B) = (P1 + P2++Pn)/n (no. of parcels)

P1, P2 Pn are parcel size of each vessel in a month.

Transit storage Time for Bulk Cargo = 0.5 (B/A)

The transit dwell time for iron ore will be 18 days up to commencement of ship loading operation.

Weightage in case of a shortfall in meeting the prescribed performance standard is 20%.

3. Turnaround Time for receipt / delivery operation:

The Turnaround Time for receipt/delivery operation shall be the sum of time taken for unloading of cargo divided by the number of rakes deployed, as the case may be, in a month. Further, in case the rake does both unloading and loading operations on a single entry into the terminal, the time allocated shall be doubled for those rakes.

The norms will be as follows:

- Rake for Iron Ore (Single operation) : 10 hours
- Rake for Iron Ore (Double operation) : 18 hours

58 BOXN wagons per rake

Weightage in case of a shortfall in meeting the prescribed performance standard is 10%.

Performance Evaluation and calculation of liquidated damages:

Performance evaluation shall be made on a quarterly review of the reports furnished by the concessionaire and/or the records of the Concessionaire and/or by an enquiry by the Concessioning Authority. The Concessionaire shall be liable to pay liquidated damages determined at the rate of 1% (one per cent) of the Gross Revenue of the respective

quarter for every shortfall of 10% (ten per cent) in the average performance which shall be assessed in the following manner.

Each Performance Standard is calculated as an average in the manner indicated above.

The actual average performance vis-à-vis a standard will be evaluated against the prescribed standard. The shortfall will be computed as a percentage of the prescribed standard. The shortfall in respect of each performance standard will have a weightage assigned to it. The overall shortfall in average performance shall be assessed as the aggregate of the weighted shortfalls in respect of each of the performance standards. For example, if there is a shortfall in Gross Berth Output by x%, Transit Storage Dwell Time by y% and Turn round time for receipt/delivery operations by z% and the weightage assigned to such shortfalls is 0.7, 0.2 and 0.1 respectively, then the overall shortfall in average performance will be $(0.7x+0.2y+0.1z)\%$.

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