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TARIFF AUTHORITY FOR MAJOR PORTS

GNo. 171

New Delhi,

09 July 2010

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal from the TM International Logistics Limited for prescribing conditionalities in its Scale of Rates governing short-term allotment of Storage area as in the Order appended hereto.

(Rani Jadhav)
Chairperson

Tariff Authority for Major Ports
Case No. TAMP/29/2008 - TMILL

TM International Logistics Limited

Applicant

ORDER

(Passed on this 16th day of June 2010)

This case deals with the proposal received from TM International Logistics Limited (TMILL) for prescribing conditionalities in its Scale of Rates governing short-term allotment of storage area.

2. This Authority had passed an Order dated 12 October 2007 fixing tariff for the services rendered by the TMILL at Berth No.12 of the Kolkata Port Trust (KOPT) at the Haldia Dock Complex (HDC). Rates for short term allotment of storage area were prescribed in the Scale of Rates (SOR) of TMILL as an interim measure subject to TMILL submitting a proposal for prescribing conditionalities governing the application of such storage rates.

3.1. In compliance of the direction of this Authority, the TMILL has filed its proposal for prescribing conditionalities to govern the application of rates for short-term allotment of Storage area. The main points made by the TMILL are summarised below:

- (i). The Licence Agreement authorizes TMILL to handle all kinds of dry bulk and project cargoes (except black and liquid cargo) in Berth No.12.
- (ii). Being part of KOPT, TMILL is required to extend equivalent facilities to the port users on par with the ones received by the users at Haldia Dock Complex.
- (iii). TMILL needs to offer land on 'short term lease' as no user will have to pay any demurrage if not evacuated within the free period of 3 days as prescribed in the SOR of KOPT.

3.2. The TMILL has furnished draft conditionalities to govern the application of rates for short-term allotment of land. The proposed conditionalities are found to be generally akin to the conditionalities approved by this Authority in the existing Rent Schedule for Land and Buildings of KOPT at HDC vide Order dated 27 March 2000. A comparative position of the conditionalities proposed by TMILL and the conditionalities prescribed in the existing Rent Schedule of HDC is given below:

Conditionalities proposed by TMILL	Conditionalities approved in the Rent Schedule for Land and Buildings at HDC
The licensing of open/covered space by TMILL within its allotted area for a period of up to one year on monthly rent basis for storage of import/export cargo may be done without recourse to a tender procedure. The following conditions shall be followed in such cases: (i). Port users requiring allotment of space for storage of their cargo may apply to Sr. Manager (Operations), TMILL. The Chief (PO) shall have the discretion to allot or refuse to allot such space. (ii). The period of license shall not exceed one year. (iii). The space allotted shall not be subletted/assigned/ transferred.	The licensing of open/covered space inside Dock Interior Zone for a period upto one year on monthly rent basis for storage of import/export cargo may be done without recourse to a tender procedure. The following conditions shall be followed in such cases: (i). Port users requiring allotment of space for storage of their cargo may apply to General Manager (Ops.). The Chairman/Dy. Chairman(H) shall have the discretion to allot or refuse to allot such space. (ii). The period of licence shall not exceed one year. (iii). The space allotted shall not be sublet/assigned/ transferred.

(iv). Encroachment or unauthorized occupation of land and Railway Tracks etc. by the licensee will involve a liability to pay a penalty at the rate of ten times the scheduled license fee in addition to the cost of rectification of damages caused to the TMILL's properties. If the licensee fails to remove the cargo from the encroached area in spite of notice to do so, the cargo will be removed elsewhere within TMILL's allotted area by TMILL at the risk and cost of the licensee and penal license fee at the rate of ten times the normal rate will be levied on the space occupied by the cargo so removed. (v). Cargo stored under a license shall be at the entire risk and responsibility of the licensee. The licensee shall post his own watchman to safeguard the cargo stored at the allotted space and to prevent any unauthorized occupation of such space by others. (vi). The licensee shall not construct or put up any building, erection or convenience on space occupied under license. (vii). In case the licensee fails to hand over the space in vacant possession on the date of expiry of the license, TMILL shall levy normal demurrage charges as per TMILL's Scale of Rates as applicable from time to time for the period the cargo remains in TMILL's premises beyond the period for which the license was granted. (viii). If the licensee requires extension of the license, an application for extension must be made so as to reach the Sr. Manager (Ops), at least 7 days before the expiry of the period of the license. (ix). The licensee shall agree to comply with all rules and directions issued by TMILL from time to time. If the licensee neglects to comply with such rules or directions, TMILL may terminate the license. (x). The license is terminable on 15 days' notice on either side. (xi). Minimum charges for 100 sq.m. would be payable by the licensee even if the request for allotment is less than 100 sq.m. (xii). The licensee shall agree that all payments and expenses of whatever sort due to TMILL in respect of the license be recovered at	(v). Encroachment or unauthorised occupation of land and Railway tracks, etc., by the licensee will involve a liability to pay a penalty at the rate of ten times the scheduled licence fee, in addition to the cost of rectification of damages caused to the Port properties. If the licensee fails to remove the cargo from the encroached area in spite of notice to do so, the cargo will be removed elsewhere by the Port at the risk and cost of the licensee and penal licence fee at the rate of ten times the normal rate will be levied on the space occupied by the cargo so removed. (iv). Cargo stored under the licence shall be at the entire risk and responsibility of the licensee. The licensee shall post his own watchman to safeguard the cargo stored at the allotted space and to prevent any unauthorised occupation of such space by others. (vi). The licensee shall not construct or put up any building, erection or convenience on space occupied under licence. (vii). In case the licensee fails to hand over the space in vacant possession on the date of expiry of the licence, HDC/CPT shall levy normal demurrage charges as per HDC/CPT's Scale of Rates as applicable from time to time for the period the cargo remains in HDC/CPT's premises beyond the period for which the licence was granted. (viii). If the licensee requires extension of the licence, an application for extension must be made so as to reach the General Manager (Ops.), at least 15 days before the expiry of the period of the licence. The total period of licence including all subsequent extension granted shall not exceed 3 years from the date of initial allotment of space. (ix). The licensee shall agree to comply with all rules and directions issued by HDC/CPT from time to time. If the licensee neglects to comply with such rules or directions, HDC/CPT may terminate the licence. (x). The licence is terminable on 15 days' notice on either side. ---- (xi). The licensee shall agree that all payments and expenses of whatever sort due to HDC/CPT in respect of the licence be
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the rates prescribed on TMILL's Scale of Rates from time to time. (xiii). The licensee shall comply with all rules or regulations that may from time to time be issued by the Inspector of Explosives, Department of Explosives, Government of India or whosoever concerned in relation to storage of cargo. (xiv). The license fee will be charged from the date of handing over possession of the land on the actual area to be found on demarcation. (xv). No claim for any compensation whatsoever for revocation of the license will be entertained. (xvi). The licensee shall be required to utilize the allotted land for the purpose for which it is licensed. No change in purpose of utilization will be allowed without specific written permission from TMILL. (xvii). The licensee will not cause any damage to TMILL's properties. If, however, any damage is caused, the licensee shall be liable to make good the damages at his own cost and arrangement to the satisfaction of TMILL. (xviii). The licensee shall have to make his own arrangements to keep the allotted land and its surroundings neat, clean and in proper sanitary condition.	recovered at the rates prescribed in HDC/CPT's Rent Schedule from time to time. (xii). The licensee shall comply with all rules or regulations that may from time to time be issued by the Municipal Authority or the Inspector of Explosives, Department of Explosives, Government of India or whomsoever concerned in relation to storage of cargo. (xvii). The license fee will be charged from the date of handing over possession of the land on the actual area to be found on demarcation. The amount of security deposit will also be determined on the actual area as found on demarcation. (xix). No claim for any compensation whatsoever for revocation of the licence will be entertained. (xx). The licensee shall be required to utilise the allotted land for the purpose for which it is licensed. No change in purpose of utilisation will be allowed without specific written permission from the CPT. (xxi). The licensee will not cause any damage to CPT properties. If, however, any damage is caused, the licensee shall be liable to make good the damages at his own cost and arrangement to the satisfaction of the CPT. (xxii). The licensee shall have to make his own arrangements to keep the allotted land and its surroundings neat, clean and in proper sanitary condition.
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4. In accordance with the consultative procedure prescribed, the proposal filed by the TMILL was forwarded to the KOPT and circulated to the concerned users including the additional users recommended by the TMILL seeking their comments. The comments received from the KOPT and users were forwarded to TMILL as feedback information.

5. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received will be sent separately to the relevant parties. These details will also be made available at our website <http://tariffauthority.gov.in>

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

- (i). The Kolkata Port Trust (KOPT) has entered into a License Agreement (LA) with TM International Logistics Limited (TMILL) in January 2002 for equipping, constructing, financing, operating and managing the Berth No.12 for a period of 30 years. The KOPT has allotted the multipurpose Berth No.12 alongwith its backup area for the said purpose of LA.
- (ii). During the proceeding relating to the fixation of tariff for TMILL in October 2007, the KOPT expressed concern that if the rates for short term allotment of facilities

are applied by TMILL in the cases where demurrage charges would be more appropriate, it will have major financial impact on the revenue share receivable by KOPT from TMILL. Therefore, KOPT suggested that conditionalities similar to such allotment as in the case of HDC may be prescribed. Recognising the concern expressed by the KOPT, rates for short terms allotment of facilities were prescribed in the Scale of Rates of TMILL subject to the condition that TMILL files a separate proposal for including suitable conditionalities governing short term allotment of storage area in its Scale of Rates.

- (iii). As brought out in the factual position narrated in the initial part of this note, the conditionalities proposed by TMILL to govern the application of rates for short term allotment of facilities are generally similar to the conditionalities in the existing Rent Schedule for Land and Buildings of HDC. The users have unanimously endorsed the conditionalities proposed by the operator. The licensor port is also in agreement with the proposal of the TMILL but suggested minor modifications to some of the proposed conditions. We have not received any objection from the TMILL to the modifications suggested by the KOPT. That being so, setting up joint hearing in this case was not felt necessary. This Authority, therefore, proceeds to dispose of the proposal in reference filed by TMILL and the comments of different stakeholders, which are available on record.
- (iv). The Government of India in the (then) Ministry of Shipping, Road Transport and Highways (MSRTH) announced revised Land Policy guidelines in February / March 2004, which was made applicable to KOPT in February 2005 vide Ministry's letter No.Pt-17011/32/2000-Pt dated 10 February 2005. The tariff guidelines of March 2005 require this Authority to follow the Land Policy guidelines issued by the Government of India in the matter of regulating lease rentals at the major ports. Some of the conditionalities in the existing Scale of Rates for allotment of land at KOPT required modifications in the light of the said policy announcement. Till such time the estate rentals at KOPT are reviewed, the KOPT has been directed to implement the conditions prescribed in the policy guidelines vide Order No.TAMP/56/2005-KOPT dated 31 August 2006 passed by this Authority. Accordingly, the existing conditionalities in the Schedule of Rent for allotment of Land and Buildings of KOPT at Haldia and the relevant Scale of Rates for allotment of land at Kolkata stand amended to the extent such conditionalities are inconsistent or at variance with the Land Policy guidelines issued by the Government. The conditionalities proposed by the TMILL should also be aligned with the Land Policy guidelines issued by the Government.
- (v). The conditionalities proposed by TMILL are for letting out the facilities on license basis for storage of cargo. The condition to license the facilities without recourse to a tender procedure is found to be in line with clause 5.2.2.(b) of the Land Policy guidelines of Government.
- (vi). The TMILL has proposed a condition to allot the facilities on license basis for a maximum period of one year. This condition is modified to state that the period of license shall not exceed eleven months in line with Clauses 5.1.1.(b) and 5.2.2.(b) of the Land Policy guidelines of Government which restrict such allotment to a maximum period of 11 months.
- (vii). The proposed conditions requiring the users to make applications for allotment of space and extension of license to the designated authorities of TMILL need not form part of the Scale of Rates since these conditions are concerned with the administrative procedures of TMILL.
- (viii). The proposed conditionalities include a provision that the space allotted by the TMILL to the users shall not be sublet / assigned / transferred. The additional condition suggested by KOPT that the allotted space shall not be shared by the licensee is approved since the space allotted a user should be for the exclusive use of the concerned user only.

- (ix). One of the proposed conditionalities envisages levy of penal license fee at ten times the approved rate for encroachment or unauthorised occupation of facilities and stipulates that cost of rectification of damages caused to the facilities of TMILL encroached by the licensee and cost of removal of cargo from the encroached area will be to the account of the concerned licensee. Considering that the proposed condition is a penal provision to protect the interest of the terminal operator against an errant user and keeping in view that such a penal provision is prescribed in the existing Rent Schedule of HDC, the proposed condition is approved.
- (x). The unit of levy of lease rentals approved in the existing Scale of Rates of TMILL is per sq. mtr. per month similar to the provision prescribed in the Rent Schedule of HDC. As correctly pointed out by KOPT, the operator should realise license fee for the area actually allotted. Therefore, the proposed conditionality to levy a minimum charge for 100 sq. mtr. is not approved.
- (xi). In the existing arrangement approved in the Rent Schedule of HDC and the proposed conditionality as well, the licensee of the space is required to comply with the rules or regulations issued by the concerned Authorities as listed in the provision in relation to storage of cargo. The name of "KOPT" and the "Municipal Authority" is added to the list of the authorities including the word "instructions", apart from the words "rules" or "regulations", as suggested by the KOPT.
- (xii). The proposed condition to levy normal demurrage charges as per the Scale of Rates of TMILL in case the licensee fails to hand over the space allotted on license basis on expiry of the license period is approved since the license fee will cease to apply on the expiry of the maximum license period of eleven months.
- (xiii). Clause 4.6. of the tariff guidelines of March 2005 stipulates that when the operational area is leased on rental terms to the users, demurrage on cargo stored in the leased premises should not be levied again. Accordingly, a provision in this regard is incorporated in the conditionalities.

7. In the result, and for the reasons given above and based on a collective application of mind, the following conditionalities are inserted in the Scale of Rates of TMILL in Section 10 after the existing subsection 10.2.:

- "10.3. The licensing of open/covered space by TMILL within its allotted area for a period of up to (11) eleven months on monthly rent basis for storage of import/export cargo may be done without recourse to a tender procedure. The following conditions shall be followed in such cases:
- (i). The period of license shall not exceed (11) eleven months.
 - (ii). The space allotted shall not be subletted/assigned/ transferred/shared by the allottees.
 - (iii). Encroachment or unauthorized occupation of land and Railway Tracks etc. by the licensee will involve a liability to pay a penalty at the rate of ten times the scheduled license fee in addition to the cost of rectification of damages caused to the TMILL's properties. If the licensee fails to remove the cargo from the encroached area in spite of notice to do so, the cargo will be removed elsewhere within TMILL's allotted area by TMILL at the risk and cost of the licensee and penal license fee at the rate of ten times the normal rate will be levied on the space occupied by the cargo so removed.
 - (iv). Cargo stored under a license shall be at the entire risk and responsibility of the licensee. The licensee shall post his own watchman to safeguard

the cargo stored at the allotted space and to prevent any unauthorized occupation of such space by others.

- (v). The licensee shall not construct or put up any building, erection or convenience on space occupied under license.
- (vi). In case the licensee fails to hand over the space in vacant possession on the date of expiry of the license, TMILL shall levy normal demurrage charges as per TMILL's Scale of Rates as applicable from time to time for the period the cargo remains in TMILL's premises beyond the period for which the license was granted.
- (vii). The licensee shall agree to comply with all rules and directions issued by TMILL from time to time. If the licensee neglects to comply with such rules or directions, TMILL may terminate the license.
- (viii). The license is terminable on 15 days' notice on either side. No claim for any compensation whatsoever for revocation of the license will be entertained.
- (ix). The licensee shall agree that all payments and expenses of whatever sort due to TMILL in respect of the license be recovered at the rates prescribed on TMILL's Scale of Rates from time to time.
- (x). The licensee shall comply with all instructions, rules or regulations that may from time to time be issued by KOPT, Municipal Authority, the Chief Controller of Explosives, Government of India or whosoever concerned in relation to storage of cargo.
- (xi). The license fee will be charged from the date of handing over possession of the land on the actual area to be found on demarcation.
- (xii). When the storage area is allotted on license basis for storage of import / export cargo, demurrage on cargo stored in the licensed premises shall not be levied again.
- (xiii). The licensee shall be required to utilize the allotted land for the purpose for which it is licensed. No change in purpose of utilization will be allowed without specific written permission from TMILL.
- (xiv). The licensee will not cause any damage to TMILL's properties. If, however, any damage is caused, the licensee shall be liable to make good the damages at his own cost and arrangement to the satisfaction of TMILL.
- (xv). The licensee shall have to make his own arrangements to keep the allotted land and its surroundings neat, clean and in proper sanitary condition."

(Rani Jadhav)
Chairperson