

(Published in Part - III Section 4 of the Gazette of India, Extraordinary)
Tariff Authority for Major Ports

G.No.306

New Delhi,

3 September 2015

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 received from Kolkata Port Trust (KOPT) for fixation of rate for use of Port's Railway weighbridge as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/25/2015-KOPT

Kolkata Port Trust

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Applicant

QUORUM

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. Chandra Bhan Singh, Member (Economic)

ORDER

(Passed on this 10th day of August 2015)

The proposal under consideration has been received from the Kolkata Port Trust (KOPT) for fixation of rate for use of Port's Railway weighbridges.

2.1. The main submission made by the KOPT in its letter dated 09 April 2015 as well as points taken from the copy of the Board resolution furnished by the KOPT along with its letter dated 09 April 2015 are summarized below:

- (i). The Haldia Dock Complex (HDC) at KOPT had recently floated tender and is in the process of finalization of a contract for Supply, Installation, Operation and Maintenance of 2 Nos of Road weighbridge as well as 2 Nos Railway Weighbridges to satisfy customer demand. As per the tender, the facility will be created and operated by the successful bidders who will be paid by HDC as per the contract rate while KOPT shall recover as per Scale of rates.
- (ii). KOPT's present Scale of Rates (SOR) contains a rate for use of road weighbridge but does not have any rate for use Rail weighbridge. Accordingly, a rate for the said Rail Weighbridge service is required so that the charge can be collected from the user of the proposed facilities.
- (iii). In the present SOR of the KOPT, a rate has been prescribed for use of Port's Road Weigh bridge under S.16.1 (6) of the SOR. The applicable rate is ₹5.18 Per ton (subject to a minimum of ₹25.92 for an empty vehicle and ₹51.84 for a loaded vehicle). Further, the note to S.16.1 (15) (a) of the SOR dealing with Despatch related services for rail borne cargo provides the following:

“Note: If due to any reasons, the service of weighment cannot be provided by the port, the prescribed rate for weighment charges available at Sl. No.6 of S.16.1 in the Scale of Rates of the KOPT may be considered as a discount”.

- (iv). As per Clause 2.17.1 to 2.17.3 of the tariff guidelines of March 2005, whenever a specific tariff for services/ cargo is not available in the notified Scale of Rates, the port can submit the proposal and levy the rate on an adhoc basis till the rate is finally notified. For this purpose, the adhoc rate must be derived based on the existing notified tariffs for comparable services/ cargo and it must be mutually agreed upon by the port and the concerned users.
- (v). The matter was placed before the Board of Trustees where the Board has approved adoption of the charge as approved by TAMP for use of Road weighbridge in respect of Railway weighbridge. However, a different minimum charge for weighment of empty and loaded wagon has been proposed.

- (vi). Accordingly, the following is proposed for approval of TAMP as Sl. No. 17 in Section 16 under Part – III of the existing Scale of Rates of KOPT:

S.16	Miscellaneous charges	
S.16.1	Charge at the following rates shall be levied for miscellaneous services:-	
Sr. No.	Description	Rate
17	Use of Port's Rail Weigh bridge Note: i) The rate includes issuance of weighment certificate. ii) The bill will be raised for the weight of the loaded wagons weighed less the tare weight of the wagons concerned as per declaration of the Indian Railways. The weighment charge against empty wagon shall be levied, if the same is undertaken as per requirement.	₹5.18 Per ton subject to a minimum of ₹100.00 for an empty wagon and ₹200 for a loaded Wagon.

Special rate will also be applicable against the above.

- (vii). The Board of Trustees have also approved that the above rate as well as conditionality (with the applicable Special rate) may be levied on the customers against use of Railway Weighbridge facility being commissioned at KOPT on an ad-hoc basis till the rate is finally notified.
- (viii). While fixing the present tariff of the KOPT, TAMP had considered an estimated traffic of 33.60 MMT for HDC during 2014-15, while based on the current trend, the actual traffic may be around 30MMT only. This will result in realisation of less income vis-à-vis what had been considered by TAMP while fixing of tariff.
- (ix). A part of this gap is proposed to be bridged by way of providing such value added service, instead of increasing rates. Levy of the proposed rate shall not result in earning beyond permissible limit as per the tariff guidelines. Besides, this will facilitate the customer requirement also.
- (x). Further, TAMP in their order for revision of Scale of Rates of ISHPL (Licensee of Berth No. 4A) has recently approved a rate of ₹5.00 per MT as weighment charges for in motion weighbridge, vide their notification dated 7.8.2014.

2.2. In this regard, the KOPT along with its proposal has sent copies of the emails received by it from two users i.e. Jindal Steel & Power Ltd and Saraogi Udyog (P) Ltd, giving consent to the rates proposed by the KOPT for Railway Weighbridge.

3. On a preliminary scrutiny of the submissions made by KOPT, some gaps were observed in the submissions made by KOPT. Accordingly, the KOPT was requested vide our letter dated 22 April 2015 to furnish the requisite information/ clarification. After a reminder dated 29 May 2015, the KOPT has responded vide its letter dated 05 June 2015. The information/ clarification sought by us and the response of KOPT thereon are tabulated below:

Sr. No.	Clarification/ Information sought by us	Reply of KOPT
(i)	The KOPT in its above referred proposal has proposed to adopt the rate for use of the Road Weigh Bridge as prevailing in its Scale of Rates, in respect of the new service of Rail Weigh Bridge. In this regard, the KOPT to clarify whether the cost of operation and nature of service at the Rail Weigh Bridge will be comparable to the	Both Rail Weighbridge and Road Weighbridge provide weighment services and hence services are comparable. So far as cost is concerned, the same is dependent on many factors. Haldia Dock Complex, KOPT had obtained budgetary rates for supply, installation, commissioning and operation & maintenance (for 3 years) of rail and road

	Road Weigh Bridge.	Weighbridge from M/s Rice lake Weighing Systems India Ltd. As per the said quotation, the total cost including supply, installation and operation & maintenance (for 3 years) of rail weighbridge and road weighbridge are ₹1.27. Crore and ₹1.30. Crore respectively. (Copy of Budgetary offer has been furnished by KOPT) In a recent tender, the rate obtained by KOPT indicates that the rate per MT of supply, installation and O&M of a rail Weighbridge is ₹0.99 lower than that of a road weighbridge. However in case of Rail Weighbridge a substantial amount is required to be spent on track fitness to make the rail weighbridge operational. KOPT has stated that the cost of operation as well as the nature of service of Rail Weigh Bridge vis a vis Road Weigh Bridge is comparable.
(ii)	The KOPT has formulated its proposal under 2005 Tariff Guidelines. However, the proposal will have to be disposed of by the Authority following the Tariff Policy, 2015 and the Working Guidelines. Clause 5.7.1 of Working Guidelines requires the Authority to notify performance standards along with the rates for a new facility. The KOPT, therefore, to furnish the draft Performance standards pertaining to the proposed facility.	The Performance Standards for operation of In-Motion Railway Weigh Bridge would be guided by Ministry of Railways and various circulars / Guidelines issued by Indian Railways from time to time. However, the In-Motion Railway Weighbridge shall have to be calibrated regularly from the concerned authorities (Indian Railways and Measures dept.) to ensure correctness of weightment.
(iii)	The KOPT, along with its proposal, has furnished copies of the letter of consent obtained by it from two users viz. Jindal Steel & Power Ltd and Saraogi Udyog (P) Ltd. The KOPT to confirm whether the said two users only would be relevant to be considered for consultation in the case of reference. If any other users are to be consulted, their contact details to be furnished.	The list of concerned Users alongwith contact details handling coal at Haldia Dock Complex (HDC) is furnished.

4. In accordance with the consultative procedure prescribed, a copy each of the KOPT letter dated 09 April 2015, our letter dated 22 April 2015 and KOPT response dated 05 June 2015 was forwarded to the concerned users/ user organizations seeking their comments. None of the users/ user organisations have furnished their comments inspite of a reminder dated 08 July 2015, till the case was taken up for finalisation.

5. The KOPT has stated that the performance standard for operation of in-motion Railway Weighbridge would be guided by Ministry of Railways and various circulars/ guidelines issued by Indian Railways from time to time. In context to this, while acknowledging the proposal vide our letter dated 17 June 2015, it was communicated to KOPT with regard to Performance Standards, that the Tariff Policy, 2015, read with the Working Guidelines issued to operationalize the Tariff Policy stipulates prescription of Performance Standards. Accordingly, the KOPT was again requested to obtain Performance Standards in relation to the Rail Weighbridge operation at KOPT from Railways and propose for prescription. It was also communicated to KOPT that Indexation of SOR as mentioned in clause 2.8 of the Tariff Policy, 2015 will be subject to achievement of performance standards, committed by KOPT as interpreted in clause 3.2 of the said Policy. The KOPT was also requested to note that indexation may not be available to the said tariff item in the absence of Performance Standards for operation of the Rail Weigh Bridge. After a

reminder dated 21 July 2015, the KOPT has responded vide its letter dated 28 July 2015. The submissions made by the KOPT in this regard are summarised below:

- (i). The Railway weighbridges being weighing scales, the requirement is accuracy of weightment and final acceptance of the same by the Railway Authority. The weighbridge readings are to be used for issuance of Railway receipts. Accordingly, the following performance standard may be prescribed.

“The stamping and verification of the weighbridges shall be done annually by the Weights & Measurement Department of State Govt. Weighbridge to be cross checked by Indian Railway test wagon.”

- (ii). The performance parameters prescribed under CI – 3.1 of Tariff Policy are to be achieved by a port for the indexation of the Scale of Rates of that Port in totality. The performance standards have also been laid down in the Policy.
- (iii). TAMP may kindly appreciate that such standards, as indicated in the Tariff Policy of 2015, like average ship day output, average moves per hour (in case of container) etc., cannot be applied on a service like Railway Weigh Bridge in isolation. If KOPT achieves committed performance standard, the indexation will be applicable to all related Services, as per the Policy of 2015.
- (iv). TAMP is accordingly requested to consider the above for approval of the proposal of KOPT.

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

- (i). In order to satisfy the demand of the customers, the KOPT has envisaged deployment of 2 numbers of Road weighbridges as well as 2 numbers of Railway Weighbridges at the Haldia Dock Complex (HDC) of KOPT. In this connection, the KOPT has entrusted the responsibility of Supply, Installation, Operation and Maintenance of the Road weighbridges as well as Railway Weighbridges to a contractor. Though the contractor would deploy the Road weighbridges and Railway Weighbridges on behalf of KOPT, the KOPT itself shall recover the rate for the use of the Road weighbridges as well as Railway Weighbridges as per Scale of rates and that the contractor would be paid as per the contract rate agreed between the KOPT and the Contractor. Thus, the arrangement envisaged between the KOPT and the contractor is purely a contracting arrangement and not a BOT/ BOOT arrangement falling under Section 42(3) of the Major Port Trusts Act, 1963. In this connection, it is reasonable to assume that the KOPT, as a statutory body, would have kept in view the statutory provisions, before entering into the arrangement envisaged.
- (ii). As reported by KOPT, since the Road weighbridges and the Railway Weighbridges would be deployed, the KOPT requires a rate to be levied on the users for the use of the Road weighbridges and Railway Weighbridges. Its existing Scale of Rates already prescribes a rate of ₹5.18 per ton for the use of Port's Road Weigh Bridge, which would be levied by KOPT in case of deployment of a Road Weigh Bridge. However, the existing Scale of Rates of KOPT does not prescribe a separate rate for the use of a Railway Weigh Bridge. Thus, the proposal of the KOPT now is to enable it adopt the charge as approved by this Authority for use of Road weighbridge as prevailing in its existing Scale of Rates in respect of Railway weighbridge also. The proposal of the KOPT has the approval of its Board of Trustees.
- (iii). Clause 5.4 of the Tariff Policy stipulates that in case there are no objections from users for a proposal or a case, this Authority need not organize any joint hearing. In the case in reference, as brought out earlier, there have been no objections from the users with regard to the rate for the use of the Railway Weigh Bridge as

proposed by the KOPT. In view of the above position, no joint hearing has been felt necessary in the case in reference.

- (iv). (a). To enable the KOPT to adopt the rate of the Road Weighbridge in respect of the Rail Weighbridge, the KOPT in its proposal has drawn reference to Clause 2.17.1 to 2.17.3 of the Tariff Guidelines of 2005. In this regard, it is relevant to mention here that with effect from January 2015, all the Major Port Trusts are governed by the stipulations contained in the Tariff Policy, 2015, read with the Working Guidelines issued by this Authority to operationalize the Tariff Policy, 2015. As per Clause 5.7.1 of the Working Guidelines, whenever a specific tariff for a service/ cargo is not available in the Scale of Rates of that particular port, then the concerned Major Port Trust can propose adoption of tariff and performance standards fixed for comparable cargo/ equipment/ service in any other Major Port Trust and in the absence of such representative tariff, the port may file the proposal for notification of tariff for the said new cargo/ equipment/ service with reference to optimal capacity, rated capacity or based on Cost plus 16% return formula.
- (b). Based on the stipulation contained in Clause 5.7.1 of the Working Guidelines, the KOPT, instead of drawing reference to the Scale of Rates of any other Major Port Trust, is seen to have drawn reference to the rate for the use of Road Weigh Bridge as prescribed in its own Scale of Rates and proposes to adopt the same tariff for the Railway Weigh Bridge also with a different minimum charge for weighment of empty and loaded wagon, instead of the minimum charge of ₹25.92 for an empty vehicle and ₹51.84 for a loaded vehicle, prescribed in the case of use of Road Weighbridge, the KOPT has proposed a minimum rate of ₹100/- for an empty wagon and ₹200/- for a loaded Wagon, to be levied in the case of use of Rail weighbridge. The KOPT is of the view that both Rail Weighbridge and Road Weighbridge provide comparable service of weighment. The KOPT has also furnished budgetary quotations to establish that the cost of a Road Weigh Bridge as well as the Railway Weigh Bridge is comparable.
- (c). It is only in a scenario, where tariff is not available either in KOPT or in any other major port, that the tariff is to be determined for the use of the Rail Weighbridge based on one of the various approaches as listed out at Clause 5.7.1 of the Working Guidelines.
- (v). Given that the proposal of the KOPT has the approval of its Board of Trustees and since the users have given consent to the rate for the use of the Railway Weigh Bridge as proposed by the KOPT, this Authority is inclined to accord approval to the proposal of the KOPT. However, in this connection, it is clarified that though approval has been accorded to the proposal of the port, the cost elements constituting the proposed rate have not been gone into. Since, there is no objection from the concerned stakeholders, the rate as proposed by the KOPT is only endorsed.
- (vi). (a). As brought out in the earlier part of the note, the KOPT has sought approval for the levy of the proposed rate on adhoc basis, till the final rate has been finally notified by this Authority. In this connection, it is relevant to draw reference to Clause 5.7.3 and 5.7.4 of the Working Guidelines, which stipulate that with the submission of proposal, the proposed rate can be levied on an ad hoc basis till the rate is finally notified, provided the ad hoc rate to be operated and the Performance Standards to be applied in the interim period must be based on the approach outlined in clause 5.7.1 of the Working Guidelines and it must be in consultation with the concerned users.

- (b). As already brought out above, the rate proposed to be levied by the KOPT for the use of the Rail Weigh Bridge is the rate prevailing in the Scale of Rates for the use of the Road Weigh Bridge though, there is change in minimum rate for empty container and loaded container. Further, though none of the users have objected to the proposed rates, KOPT has furnished communications received by it from two of the users giving their consent to the levy of proposed charges on adhoc basis. Also, the proposal of the port to levy the charges on adhoc basis has the approval of its Board of Trustees.
- (c). Given that the rate levied by the KOPT on adhoc basis and the rate approved by this Authority are the same, and also since the users have given their consent to the levy of said charges on adhoc basis, this Authority is inclined to regularize the levy of Rail Weigh Bridge charges at the proposed rate with effect from the date of commencement of the levy by KOPT till the effective date of implementation of the Order passed by this Authority in this case.
- (vii). The approval accorded by this Authority for the levy of charges would involve some financial implication, as KOPT may earn revenue from the use of the Railway Weigh Bridge also. Since the additional income estimated to be earned by KOPT from the proposed rate had not been anticipated and factored while deciding the general revision proposal of KOPT disposed in 2014, there can be an argument that some other rate should be adjusted to maintain revenue neutral position.

In this regard, it is relevant here to mention that the question of ensuring a revenue neutral position arises when a port has already been given tariff whatever is due to it, based on the estimated cost position and thereafter it is to be again granted a new tariff. However, in the case of KOPT, it is relevant to recall that in the proceedings relating to the KOPT general revision case disposed in February 2014, the port had sought Return on Capital employed to the tune of 12% only, as against the maximum permissible return of 16% on the ground that 16% ROCE would have required steeper increase in basic rates. Thus, based on the request made by the KOPT, Return to the tune of 12% only was allowed and accordingly increase was allowed at the then existing tariff, leaving some quantum of deficit uncovered. Therefore, the question of adjustment in some other rate to maintain revenue neutral position does not arise. Incidentally, even the KOPT has also confirmed that the levy of the approved rate shall not result in KOPT earning beyond permissible limit as per the tariff guidelines.

- (viii). With regard to the proposal of the port to levy the 5% special levy on the charges for the use of Railway Weigh Bridge, again there is a scope of argument that levy of 5% special levy on the charges for the use of Railway Weigh Bridge by the KOPT, which had not been anticipated during the disposal of the general revision proposal of KOPT, will lead to port recovering an additional amount as compared to the amount determined towards the pension liability. In this connection, it is relevant to recall that as mentioned in the general revision Order, the pension levy had been worked out to about 5.34%. However, for the present, the KOPT has been authorised to charge a special rate of 5% in the current tariff cycle and the position was to be reviewed at the time of the next revision of its Scale of Rates. Thus, the pension liability to the tune of about ₹ 0.42 crores (Pension liability of ₹124.87 crores x 0.34%) has been left uncovered. Thereafter, while disposing the proposal received from the KOPT for fixation of rate for Customs inspection (both on wheel or otherwise) at Container Terminal of Kolkata Dock system under KOPT vide Order no. TAMP/31/2014-KOPT dated 30 September 2014, an amount of ₹ 0.29 crores has been estimated to be recovered by the Port towards pension liability, from the additional income to be generated by the KOPT on account of levy of rate for Customs inspection. This leaves a balance of ₹ 0.13 crores left

uncovered. Thus, the question of port earning any undue benefit out of levy of 5% special levy of the charges for the use of Railway Weigh Bridge does not arise.

- (ix). The Tariff Policy, 2015 read with the Working Guidelines issued to operationalize the Tariff Policy stipulates prescription of Performance Standards. Accordingly, at our request, the KOPT has proposed to prescribe the Performance standard as "The stamping and verification of the weighbridges shall be done annually by the Weights & Measurement Department of State Government Weighbridge, to be cross checked by Indian Railway test wagon." According to KOPT, Railway weighbridges being weighing scales, the requirement is accuracy of weighment and final acceptance of the same by the Railway Authority for issuance of Railway receipts. In view of the above, the KOPT has proposed to approve the Performance Standard as proposed by it. The formulation proposed by KOPT is to ensure the accuracy of the weighbridge by annual stamping and verification of the weighbridges. Therefore, the proposed formulation is prescribed as a note.

7.1. In the result, and for the reasons given above, and based on a collective application of mind, the following provision is added as Sl. No. 17. under Section 16.1 (Miscellaneous Charges) under Part- III – Miscellaneous Charges, in the existing Scale of Rates of KOPT:

Sr. No.	Description	Rate
17	Use of Port's Rail Weigh bridge Note: i) The rate includes issuance of weighment certificate. ii) The bill will be raised for the weight of the loaded wagons weighed less the tare weight of the wagons concerned as per declaration of the Indian Railways. The weighment charge against empty wagon shall be levied, if the same is undertaken as per requirement. iii) Special rate will also be applicable against the above.	₹5.18 Per ton subject to a minimum of ₹100.00 for an empty wagon and ₹200 for a loaded Wagon.

Note : The stamping and verification of the Rail Weigh Bridges shall be done annually by the Weights and Measurement Department of State Government Weighbridge to be cross checked by Indian Railway Test Wagon.

7.2. Since the rate towards the Rail weigh Bridge as levied by the KOPT in the interim period and that the rate approved by this Authority are the same, the rate shall come into effect immediately from the date of Notification of the Order in the Gazette of India and shall remain valid till 31 March 2016 co-terminus with the validity of the existing Scale of Rates of KOPT. The levy of Rail Weigh Bridge charges by KOPT at the proposed rates with effect from the date of commencement of the levy by the KOPT till the effective date of implementation of the Order passed is regularised.

(T.S. Balasubramanian)
Member (Finance)