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Tariff Authority for Major Ports

G. No. 254

New Delhi,

21 July 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 the Kolkata Port Trust for approval of a consolidated handling charge of ₹40.00 per MT, inclusive of all cargo and barge related services, for handling of Fly Ash at the proposed Fly Ash Jetty of HDC, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports

Case No. TAMP/33/2015-KOPT

Kolkata Port Trust

Applicant

QUORUM:

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

O R D E R

(Passed on this 2nd day of July 2015)

This case relates to the proposal dated 28 April 2015 received from Kolkata Port Trust (KOPT) for approval of a consolidated handling charge of ₹40.00 per MT, inclusive of all cargo and barge related services, for handling of Fly Ash at the proposed Fly Ash Jetty of HDC.

2. The main points made by KOPT in its proposal dated 28 April 2015 are summarized below:

- (i). At present, Inland Waterways Authority of India (IWAI) is handling Fly Ash export from Haldia to Bangladesh through their two jetties having capacity of 0.5 MMTPA of Fly Ash per annum at HDC. The Fly Ash vessels are Inland vessels which ply between HDC and Bangladesh through riverine route.
- (ii). Owing to the setting up of power plants, there is likely to be an upward trend in handling of fly ash. Therefore, the KOPT has felt the definite need for augmentation of a Fly Ash jetty by HDC for earning revenue in this respect. In this connection, the KOPT has decided to construct a Fly ash handling facility at Haldia.
- (iii). KOPT invited tender and the successful bidder has quoted a rate of ₹25.75 per MT for construction and operation of the facility.
- (iv). The charges applicable for Inland Vessels are specified under Section 31 of part-VII of the existing Scale of Rates of KOPT, wherein a consolidated handling charge of ₹40 per MT for handling Fly Ash vessels at TT shed of KDS is prescribed. This rate is inclusive of all cargo and barge related charges.
- (v). The Board of Trustees have approved to seek approval of TAMP for adoption of the said consolidated rate of ₹40/- per MT, inclusive of all cargo and barge related services, for handling of Fly Ash at the proposed Fly Ash handling facility at HDC.
- (vi). If approved by TAMP, HDC will have a net revenue of ₹14.25 per MT for cargo handled in the proposed facility after payment of ₹25.75 per MT to the contractor. The net revenue as stated above is higher than the rate of ₹11.66 per MT presently receivable by HDC for handling of fly ash at IWAI jetty.
- (vii). Accordingly, the KOPT has proposed the following amendment in its Scale of Rates:
"S.31: For handling of Fly ash vessels at TT Shed of KDS as well as Fly Ash Jetties at HDC, operated by the KOPT, a consolidated handling charge, inclusive of all cargo and barge related services, shall be levied at the rate of ₹40.00 per MT."

3. On a preliminary scrutiny of the proposal of KOPT, the KOPT was requested vide our letter dated 20 May 2015 to furnish additional information/ clarification. In this connection, the KOPT vide its letter dated 9 June 2015 has responded. The additional information/clarification sought by us and the response of KOPT thereon are tabulated below:

Sr. No	Information/ Clarification sought by TAMP	Reply furnished by KOPT.
1.1	Section 42(4) of the Major Port Trust Act, 1963 read with Section 48 requires the Authority to notify the rates in respect of identified services provided by persons authorized under Section 42(3) of the MPT Act. Further, in compliance of the policy direction issued by the Ministry of Shipping (MOS) under Section 111 of the Major Port Trust Act 1963, the Authority has notified the guidelines of 2013 for determination of tariff for Projects at Major Port Trust, which has come into effect from 9 September 2013. These guidelines apply to all the projects to be awarded by any Major Port Trust to which the provision of MPT Act apply under BOT/BOOT or any other arrangement for Private Sector participation for which RFPs are issued after the date of issue of these guidelines.	The proposed Fly Ash Jetty at HDC is not a BOT/BOOT arrangement under Section-42(3) of the Major Port Trust Act. It is purely a contracting arrangement. Under the proposed arrangement, KoPT would provide the service to the customers through a contractor engaged by KoPT and shall levy charges on them. The contractor will not be entitled to realize any charge from the customers. In this regard, it may be mentioned that authorization of levy charges from the customers is a basic requirement of any arrangement under Section-42(3) of the MPT Act and the same is not applicable in the proposed arrangement in respect of the subject Fly Ash Jetty. Under the proposed arrangement, KoPT has entrusted the responsibility of construction and operation and maintenance of the facility on one contractor. Instead of making full payment against completion of construction and separate payment against O&M of the Jetty; KoPT will make deferred payment to the contract at consolidated rate on per MT basis against cargo actually handled at the jetty during the contract period of 10 years, under the proposed arrangement. With regard to transfer of the facility free of cost after contract period is concerned, it is mentioned that KoPT is not making full payment against the construction upon completion of the construction and accordingly, the transfer of property is being deferred till completion of the contract period. The deferment of transfer of property till end of the contract period in the present contract has nothing to do with BOT mode of arrangement.
1.2	The copy of Resolution No. A/43/HDC/ADMN/3/03/2015 dated 30 March 2015 of the Board of Trustees of KOPT makes a mention, inter alia, about the mode of Contract for handling Fly Ash. The Mode of Contract envisaged by the KOPT is "Construction, operation & maintenance of the facilities in contracting mode. The facilities will come back to KOPT free of cost after the contract period". Looking to the wording of the mode of Contract, the mode of Contract is akin to the Build, Operate, Transfer (BOT) mode. That being so, the reason for not obtaining tariff approved under the Tariff Guidelines of 2013 before inviting bids to be clarified.	As the proposed Fly Ash Jetty at HDC is not a BOT/BOOT arrangement under Section-42(3) of the Major Port Trusts Act, KoPT did not approach TAMP for approval of the tariff under the Tariff Guidelines of 2013, before inviting bids.
2.	Section 42(3) of the MPT Act, 1963 stipulates that a Major Port Trust may, with the previous sanction of the Central Government, authorize any person to perform any of the service listed under sub-section 1 of section 42. However, the proposal of the KOPT does not appear to make any mention about the sanction of the Central Government for awarding the Contract for handling Fly Ash at HDC.	As the proposed arrangement is not an arrangement under Section-42(3) of MPT Act, no prior approval of Central Govt is required to be taken.
3.	If the authorization arrangement envisaged by the KOPT under Section 42(3) of the MPT Act is other than by way of a BOT Concession Agreement, Clause 9.1 of the Tariff Policy, 2015 requires the Authority to fix ceiling rates for such services with	It is reiterated that the proposed arrangement of construction and operation of Fly Ash Jetty is a purely contracting arrangement and not any arrangement under Section-42(3) of the MPT Act. Accordingly, the proposal has not been framed under Tariff Guidelines of 2013

	Performance Standards to be achieved by the Service Providers. Clause 9.2 of the said Tariff Policy describes the methodology to be followed in formulation of the proposal. The KOPT has, however, not formulated the proposal either under the Tariff Guidelines of 2013 for the services to be provided by a BOT operator or under Clause 9 of the Tariff Policy, 2015 governing the Regulation of charges levied by other authorized service provider. The KOPT to clarify as to under which Tariff Guidelines its proposal for adoption of tariff fixed in the Scale of Rates of the KOPT for application to the Service Provider, though at a lower level of ₹ 25.75 per Metric Tonne fits in.	or Clause-9.1 of Tariff Policy 2015. Both BOT arrangement and arrangements other than by way of BOT arrangements under Section-42(3) of the MPT Act allows the service provider to collect charges from the trade. Under the present proposal KoPT will realize charges from the trade and will pay the contractor against the construction, operation and maintenance of the facility on per MT basis. The existing Scale of Rates of KoPT framed under the Guidelines for Regulation of Tariff at Major Ports, 2004 is valid till 31.03.2016 and as per the discussion held during the meeting taken by TAMP on 18 April 2015 on the issue of Working Guidelines, KoPT would be required to submit its proposal for fixation of SOR under the 2015 Tariff Policy by the end of this year. Accordingly, for fixation of a rate of new service, till fixation of a new SoR under 2015 Tariff Policy, the provisions of the recently approved Working guidelines to operationalize the Policy for Determination of Tariff for Major Port Trusts, 2015 may be considered, in absence any other guidelines.
4	When the successful bidder has quoted a rate of ₹ 25.75 per Metric Tonne, burdening the user of the facility with the additional amount of ₹ 14.25 per Metric Tonne (₹ 40.00 - ₹ 25.75) needs justification.	The clause – 5.7.1. of the said Working Guidelines to operationalize the Policy for Determination of Tariff for Major Port Trust, 2015 stipulates that 'Whenever a specific tariff for a service/cargo is not available in the SOR, of that particular port, the concerned Major Port Trust can approach TAMP for notification of tariff for the said new cargo/ equipment/ service adopting the tariff and performance standards if any fixed for comparable cargo/ equipment/ service in any other Major Port Trust. In the instant case, the existing Scale of Rates of Kolkata Port Trust does have a rate for such service applicable for Kolkata Dock System. KoPT is proposing to apply the said rate notified by TAMP against the services to be rendered by KoPT in the proposed Fly Ash Jetty at HDC. The proposal is accordingly; fully in line with Working Guidelines to operationalize the Policy for Determination of Tariff for Major Port Trusts, 2015 and TAMP may kindly consider approving the proposal of KoPT for adopting the rate of the facility which is already available in the Scale of Rates of KoPT for KDS. With regard to the justification of levy of the proposed rate, it may be mentioned that KoPT will be required to pay fuel and general escalation to the contractor engaged by KoPT for construction and O&M of the facility, as per predetermined formula, in addition to the rate quoted by the contractor. Hence the rate quoted by them is not fixed. Further, as per the extant Scale of Rates of Kolkata Port Trust, 'Wharfage' @ Rs. 11.66

		per MT is applicable for handling of Fly Ash at any declared Inland Vessel Wharves of KoPT [Ref: S.4.6.2. (a) of the Scale of Rates]. Besides, 'Stayal Charge' as per Part-VII of the Scale of Rates is also applicable for handling of Inland Vessels. KoPT is proposing to recover a consolidated handling rate of Rs. 40.00 per MT and would not additionally realize any wharfage or barge related charges as per provision of the Scale of Rates in the said jetty. It may be pertinent to mention here that the rate quoted by the contractor (along with applicable escalation) will be a direct cost of KoPT for giving the service to the trade. KoPT cannot provide the service at the same rate, as KoPT needs to recover its overhead expenditure which is considerable, and also entitled to earn some profit.
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4.1. From the response of the KOPT, as brought out above, it emerges that owing to anticipating an increase in the handling of Fly Ash through the jetties at Haldia Dock Complex (HDC), the KOPT has envisaged setting up of a Fly Ash Handling facility at HDC. In this connection, the KOPT has reported to have entrusted the responsibility of construction, operation and maintenance of the jetty to a contractor. Though the contractor would handle Fly ash at the proposed jetty at HDC on behalf of KOPT, the KOPT shall levy the handling charges from the users and that the contractor will not be entitled to realize any charge from the customers. The contractor would be paid a per tonne rate on the cargo actually handled at the jetty during the contract period of 10 years by KOPT as deferred payment to enable the contractor to realise his construction, operation and maintenance cost; and, after completion of the contract period, the contractor will transfer the facility free of cost to KOPT. Since an authorization to levy charges from the customers is a basic requirement of any arrangement under Section 42(3) of the MPT Act, the proposed Fly Ash Jetty at HDC is purely a contracting arrangement and not a BOT/ BOOT arrangement falling under Section 42(3) of the Major Port Trusts Act, 1963. In a nutshell, the rate is envisaged to be levied by the KOPT on the users of the Fly Ash facility at HDC, thereby not invoking the application of Reference Tariff Guidelines of 2013 or clause 9.2 of the Tariff Policy, 2015.

4.2. In this connection, KOPT has drawn reference to Section 31 under Part – VII – Vessel related charges for Inland Vessel and Non- Propelled Vessel of its existing Scale of Rates, which is reproduced below:

"S.31	For handling of Fly Ash vessel at TT Shed of KDS, operated by KoPT, a Consolidated handling charge, inclusive of all cargo and barge related services, shall be levied at the rate of ₹40.00 per MT."
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4.3. The existing Scale of Rates already prescribes a rate of ₹ 40/- per tonne for handling of Fly ash Vessel at Kolkata Dock System (KDS) which is restricted in its application to KDS. Thus, the proposal of the KOPT is to amend the above mentioned note in a manner that it enables the KOPT to levy a rate of ₹40/- per tonne for handling of Fly ash Vessel at Fly ash jetty at HDC also.

4.4. In this connection, it is relevant here to mention that since the general revision of the Scale of Rates of KOPT undertaken in the year 2006, a common tariff structure is leviable at both the systems of KOPT viz., Kolkata Dock System (KDS) and Haldia Dock Complex (HDC), based on the overall cost position of KOPT. In the general revision of the Scale of Rates of KOPT in the year 2014, which has culminated into the existing Scale of Rates of KOPT, a rate of ₹40/- per tonne for handling of Fly Ash vessel at TT Shed of KDS has been prescribed, based on the overall cost position of the port as a whole i.e. after taking into account the cost position prevailing at both the Dock Systems at KOPT together. Therefore, it is not improper to extend the prescription of a rate which is applicable to one Dock System in KOPT to another Dock System at KOPT.

4.5. This arrangement would involve some financial implication, as fly ash vessels will now be handled at HDC also and a rate of ₹40/- per tonne approved would be levied on such vessels also. In this regard, it is recalled that in the general revision Order of KOPT passed by this Authority in February 2014, the vessel related activity of the port as a whole had depicted a deficit position of 40.88% for a period of two years i.e. 2014-15 and 2015-16. However, based on the proposal of the KOPT, a 20% increase was granted in respect of the main tariff items like berth hire, port dues, shifting charges, anchorage etc., whereas the increase was restricted to 40% in respect of few tariff items where a higher percentage of increase had been sought by the Port. Thus, the additional income, if earned by the KOPT due to the proposed amendment, will help the KOPT to bridge the gap in the unadjusted deficit amount.

4.6. Since the proposal of the port is only to extend the levy of ₹ 40/- per MT on Fly Ash Vessels from KDS to HDC and also since the general revision of Scale of rates of KOPT is already due for revision with effect from 01 April 2016, no separate consultation proceedings are found necessary at this juncture on the matter.

4.7. In view of the above position, the note proposed by KOPT is approved.

5.1. In the result, and for the reasons given above, and based on a collective application of mind, the existing Section 31 under Part – VII – Vessel related charges for Inland Vessel and Non- Propelled Vessel, in the existing Scale of Rates of KOPT is replaced with the following provision:

“S.31	For handling of Fly Ash vessel at TT Shed of KDS as well as Fly Ash Jetties at HDC, operated by KOPT, a consolidated handling charge, inclusive of all cargo and barge related services, shall be levied at the rate of ₹ 40.00 per MT.”
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5.2. The said amendment effected in the existing Scale of Rates of KOPT will come into effect after expiry of 30 days from the date of notification of the Order passed in the Gazette of India and will remain valid till 31 March 2016 co-terminus with the validity of the existing Scale of Rates of KOPT.

(T.S. Balasubramanian)
Member (Finance)