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TARIFF AUTHORITY FOR MAJOR PORTS

G.No.48

New Delhi,

05 February 2019

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 reference received from Adani Kandla Bulk Terminal Pvt. Ltd. (AKBTPL) as regards amendment in TAMP Order no.TAMP/42/2009-KPT dated 17 August 2010 and Order no.TAMP/59/2014-KPT dated 02 January 2015, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/59/2014-KPT

M/s.Adani Kandla Bulk Terminal Pvt. Ltd.

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Applicant

QUORUM

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

ORDER

(Passed on this 18th day of January 2019)

This matter relates to a reference received from Adani Kandla Bulk Terminal Pvt. Ltd. (AKBTPL) vide its letter dated 18 January 2018 and email dated 18 January 2018 for amendment in TAMP Order no.TAMP/42/2009-KPT dated 17 August 2010 and Order no.TAMP/59/2014-KPT dated 02 January 2015.

2.1. This Authority had passed an Order No.TAMP/42/2009-KPT dated 17 August 2010 fixing upfront tariff for development of Dry Bulk Terminal off Tekra near Tuna following the Upfront Tariff Guidelines of 2008 based on the proposal of the (then) Kandla Port Trust (KPT). This Order was notified in the Gazette of India on 02 November 2010 vide Gazette No.285.

2.2. As per clause 2.8 of the Upfront Tariff Guidelines 2008 and para 11.1 of the said Upfront Tariff Order dated 17 August 2010, the Upfront Tariff approved by this Authority is for the period of 30 years subject to annual indexation of 60% of Wholesale Indexed Price (WPI).

2.3. The DPT has awarded the project for development of dry bulk terminal off Tekra near Tuna based on the Upfront Tariff approved by this Authority to AKBTPL. The Concession Agreement (CA) dated 27 June 2012 was entered between the DPT and the AKBTPL.

2.4. As per Article 8.1 of CA relating to Tariff, Licensee shall be entitled to collect Tariff from the users of the Project Facilities and Services as per the Tariff Notification. The SOR approved by this Authority vide Order dated 17 August 2010 is attached as Appendix-12 in the CA.

2.5. Subsequently, as per Clause 2.9.1 of the Upfront Tariff Guidelines 2008 and para 11.2 of the Order dated 17 August 2010, AKBTPL had filed the proposal for notification of indexed SOR in their name. Accordingly, this Authority has vide Order No.TAMP/59/2014-KPT dated 02 January 2015 notified the SOR in the name of the AKBTPL duly indexing the upfront tariff notified in the 17 August 2010 Order, after consulting DPT vide our letter No.TAMP/59/2014-KPT dated 22 October 2014.

3. With reference to the said Orders, the AKBTPL vide its letter dated 18 January 2018 and email dated 18 January 2018 has made the following submissions:

- (i). With reference to the Order no.TAMP/42/2009-KPT dated 17 August 2010 and Order no.TAMP/59/2014-KPT dated 02 January 2015 and subsequent amendment, there is inadvertent typographical error in the said Orders issued by the Authority for Dry Bulk Terminal near Tuna outside Kandla Creek at DPT on Build, Operate and Transfer (BOT) basis.
- (ii). Clause no.3 of the SOR approved by the Authority, prescribing Cargo Handling Charges is reproduced below for reference and first two sentence is highlighted in bold:

3. CARGO HANDLING CHARGES:

The cargo handling charges shall be payable on the manifested cargo directly by the importer of cargo at the rates specified below:

Sr. No.	Commodity	Rate in ₹ (per tonne)	
		Foreign	Coastal
(i).	Foodgrains	155.27	93.16
(ii).	Salt	155.27	93.16
(iii).	Fertilizer	155.27	93.16
(iv).	Fertilizer raw materials	155.27	93.16
(v).	Coal	155.27	93.16

Note:

The handling charges prescribed above is a composite charge for (i) unloading of the cargo from the vessel including stevedoring and transfer of the same upto the point of storage, storage at the stackyard upto a free period of 5 days and loading on to trucks in respect of import cargo and (ii) unloading of the cargo from the trucks at the stackyard, storage at the stackyard upto a period of 15 days, transfer the cargo to the loading point and loading onto the ship including stevedoring. This composite charge includes wharfage and supply of labour, wherever necessary.

- (iii). Following other Scale of Rates approved by the Authority for Terminals at various other Ports around same period, falling under 2008 Guidelines are furnished by email dated 18 January 2018:

- (a). Order No.TAMP/38/2010-MOPT dated 18 February 2011.
- (b). Order No.TAMP/32/2010-VPT dated 29 November 2010.
- (c). Order No.TAMP/54/2009-VPT dated 04 May 2010.
- (d). Order No.TAMP/27/2009-TPT dated 23 February 2010.

Going through the SORs approved in the above mentioned Orders, there is no such mention of the clause as mentioned under Cargo Handling Charges in case of Dry Bulk Terminal at Tuna Tekra at DPT.

- (iv). (a). Thus, accordingly AKBTPL hereby requests the Authority that the clause be removed completely or rephrased as under:
"The cargo handling charges shall be payable on the manifested cargo by the importer, exporter, port user or handling agent of cargo at the rates specified below."
- (b). There have been instances where the importer is not the direct customer of the port due to trade practices. There are traders and agents who act as customers of the port and accordingly this amendment is sought in the original Order dated 17 August 2010 and notification of the SOR in the name of the AKBTPL.

4. A copy each of the reference received from the AKBTPL was forwarded to DPT for point-wise specific comments by 16 February 2018 vide our letter dated 09 February 2018. This was also followed by reminder dated 01 March 2018.

5. In response, the DPT vide its e-mail dated 12 March 2018 has responded. The relevant points of its response are as follows:

- (i). TAMP while approving the upfront tariff for 4 multipurpose cargo berth Nos.13th to 16th on BOT basis at DPT vide its Order dated 14 October 2008, Gazette notification No.192 dated 12 November 2008, had in the Annexure IV i.e. Tariff for Multipurpose cargo terminals under Schedule 3 Cargo handling charges, inserted the following phrase:
"The cargo handling charges shall be payable on the manifested cargo directly by the importer of cargo at the rates specified below." Thus, DPT had not proposed the above conditionality.
- (ii). Further, while passing the Order dated 14 October 2008 of DPT, vide Para 9 (v), TAMP had given reference of Authority approving the berth hire rates for the iron ore and coal berths of the Paradip Port Trust (PPT) vide Order No.TAMP/18/2008-PPT dated 12 August 2008 (14 July 2008). On perusal of the PPT's Order dated

12 August 2008, Annex-VI, i.e. Upfront tariff schedule for the Coal Terminal at PPT, the same Phrase is prescribed under the heading Cargo handling charges, i.e. *"The cargo handling charges shall be payable on the manifested cargo directly by the importer of cargo at the rates specified below:"*.

- (iii). Thus, from the above it can be construed that before approving the Upfront tariff for multipurpose cargo berth nos.13th to 16th on BOT basis at DPT vide Order dated 14 October 2008, the Authority had approved the same Phrase as given above in upfront tariff approved for iron ore and coal berths of PPT vide Order dated 12 August 2008.
- (iv). Accordingly, in the revised tariff proposal sent to the Authority for approval vide letter No.FA/Cost/1231/16 dated 07 January 2010 for upfront tariff setting for the Dry Bulk Terminal off Tekra near Tuna at Port of Kandla on BOT basis, DPT in the Proposed tariff Scale of Rates alongwith conditions for providing the services placed as Annexure-VIII, had proposed the following Phrase as per the tariff Order dated 14 October 2008 for multipurpose cargo berth nos.13th to 16th on BOT basis at DPT, *"The cargo handling charges shall be payable on the manifested cargo directly by the importer of cargo at the rates specified below:"*

6. The above reply furnished by DPT vide its letter dated 12 March 2018 gives background of the inclusion of said proposed provision by DPT while seeking upfront tariff for Dry Bulk Terminal at Tuna Tekra on BOT basis citing similar prescription available in the SOR approved by the Authority vide Order No.TAMP/35/2008-KPT dated 14 October 2008 for multipurpose cargo berth Nos.13th to 16th on BOT basis at DPT which followed the prescription made in the upfront tariff approved by the Authority vide Order No.TAMP/18/2008-PPT dated 12 August 2008 in PPT for Coal and Iron Ore Berths. The DPT has, however, not furnished its specific comments on the amendment proposed by AKBTPPL vide its letter dated 18 January 2018 and email dated 18 January 2018. Therefore, DPT was again requested vide our letter dated 28 March 2018 to furnish its specific comments on the amendment proposed by AKBTPPL vide its letter dated 18 January 2018 and email dated 18 January 2018. This was also followed by reminder dated 26 July 2018.

7. In response, the DPT vide its letter dated 03 August 2018 has clarified that as per existing practice in DPT, the cargo related charges including wharfage, on board labour charges etc. are being paid by the importer / exporter or by their authorized agents.

8.1. Thus, in short the representation made by the AKBTPPL revolves around the following provision prescribed in the Upfront SOR under the Schedule 3 – Cargo Handling Charges approved by this Authority vide Order No.TAMP/42/2009-KPT dated 17 August 2010 for the Dry Bulk Terminal at Tuna Tekra on BOT basis under the Upfront Tariff Guidelines of 2008:

"The cargo handling charges shall be payable on the manifested cargo directly by the importer of cargo at the rates specified below:"

8.2. The AKBTPPL has given the following reasons / justifications for seeking amendment as regards above said provision in the upfront tariff SOR approved by this Authority vide said Order dated 17 August 2010 and also in the indexed SOR notified in the name of the AKBTPPL vide Order No.TAMP/59/2014-KPT dated 02 January 2015:

- (i). There have been instances where in the importer may not be the direct customer of the port due to trade practices.
- (ii). There may be traders and agents who act as customers of the port.

8.3. Citing the above reasons, the request made by AKBTPPL is to either delete the existing said provision completely or rephrase it to include the words "exporter, port user or handling agent", after the word "importer". The modified provision proposed by the AKBTPPL is as follows:

"The cargo handling charges shall be payable on the manifested cargo by the importer, exporter, port user or handling agent of cargo at the rates specified below:"

8.4. The upfront tariff approved by this Authority under Upfront Tariff Guidelines 2008 is only subject to annual indexation at 60% of the WPI. While there is no scope for review of the upfront

tariff approved by this Authority under the Upfront Tariff Guidelines 2008, the instant case does not warrant any change or amendment in the approved Upfront Tariff. The matter arises due to inadequacy in the prescription of caption of Section 3 in the existing SOR approved by this Authority vide Order No.TAMP/42/2009-KPT dated 17 August 2010 about collection of the cargo handling charges from importer. The caption does not cover exporter and authorized agent as stated by AKBTPL. The point made by AKBTPL that there is an inadvertent typographical error is not factually correct. It is relevant here to state that during the consultation process of Upfront Tariff for Dry Bulk Terminal off Tekra near Tuna, Mundra Port & SEZ Limited who is one of the stakeholders of AKBTPL was also consulted. None of the users / user association / prospective bidders including Mundra Port & SEZ Limited who is one of the stakeholders of AKBTPL raised this point, now, brought out by AKBTPL, while processing of the case. Hence, this Authority had approved the Upfront Tariff proposal of DPT which is culminated into the Order No.TAMP/42/2009-KPT dated 17 August 2010 which included the provision *"The cargo handling charges shall be payable on the manifested cargo directly by the importer of cargo at the rates specified below:"* under the title of schedule 3 – Cargo Handling Charges.

This point was not raised by AKBTPL even while seeking notification of indexed Upfront Tariff in name of AKBTPL. This Authority has vide Order No.TAMP/59/2014-KPT dated 02 January 2015 notified the said SOR in the name of the AKBTPL duly indexing the upfront tariff notified in the Order dated 17 August 2010, after consulting DPT which also prescribes the above mentioned provision.

8.5. As rightly stated by the DPT, while seeking approval for fixation of upfront tariff caps for the Dry Bulk Terminal off Tekra near Tuna at Kandla, the port proposed the said provision which was prescribed by this Authority in the SOR approved in the Upfront Tariff Order of DPT for 13th to 16th berths for multipurpose cargo berths. This, however, flows from prescription available in the first Upfront Tariff Order No.TAMP/18/2008-PPT dated 14 July 2008 approved by this Authority relating to fixation of Upfront Tariff for iron ore terminal and coal terminal at the Paradip Port Trust (PPT) after the issue of Upfront Tariff Guidelines 2008 which came into effect from 26 February 2008. The said provision prescribed in the Upfront Tariff SOR approved by this Authority for Public Private Partnership (PPP) projects for development of iron ore terminal and coal terminal at PPT was incorporated in the subsequent Upfront Tariff approved for the PPP project of DPT for multipurpose cargo berths at Berth Nos.13th to 16th.

9.1. It is relevant to state that the present amendment sought by the AKBTPL does not entail amendment in the approved Upfront Tariff or on the estimated Annual Revenue Requirement (ARR) approved by this Authority in the upfront tariff Order dated 17 August 2010. The amendment sought by AKBTPL is to elaborate the existing provision to capture from whom cargo handling charges are collectable as per the usual practice of trade at the Deendayal Port. The DPT has also clarified that as per existing practice in DPT, the cargo related charges including wharfage, on board labour charges etc. are being paid by the importer / exporter or by their authorized agents. Hence, there is a merit to amend the caption of Section 3 of the upfront SOR approved vide said Order dated 17 August 2010 and also in the indexed SOR notified in the name of the AKBTPL vide Order No.TAMP/59/2014-KPT dated 02 January 2015.

9.2. It is also relevant here to state that note under schedule 3 - Cargo handling charges prescribes the services covered under the composite charges which covers services towards unloading of cargo from ship, free storage and ship till loading onto truck from import cargo and for unloading of cargo from truck at stack yard, free storage and loading cargo onto vessels. This means the composite handling rate covers both import cycle and export cycle. The title about collection of handling charges mentions about importer but not from exporter.

9.3. Incidentally, recently even Paradip International Cargo Terminal Private Limited (PICTPL) who is a BOT operator at PPT in whose name the indexed SOR was approved by this Authority vide Order No.TAMP/17/2018-PICTPL dated 24 April 2018 based on the Reference Tariff approved by this Authority vide Order No.TAMP/10/2014-PPT dated 19 February 2014 for development of multipurpose Berth at PPT to handle containers and clean cargo had approach this Authority on the same matter and had requested for amendment in their SOR to include the words "exporter" after the word "importer" in the existing provision in their SOR. This Authority after examining the matter has issued a corrigendum No.TAMP/17/2018-PICTPL dated 31 July 2018 including the word "exporter".

10. In the current exercise when comments of DPT were sought, the port has clarified that as per existing practice at DPT, cargo related charges including wharfage, on Board labour charges are being paid by importer / exporter or by their authorized agent.

Based on the clarification of DPT about the practice in vogue in DPT, this Authority decides to elaborate the existing provision prescribed in the upfront tariff Order No.TAMP/42/2009-KPT dated 17 August 2010 and SOR notified in the name of the AKBTPPL to include the words “/ exporters or their authorized agents” after the word “importers”.

11. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the following amendments in the SOR of upfront tariff Order No.TAMP/42/2009-KPT dated 17 August 2010 and indexed SOR notified in the name of AKBTPPL vide Order No.TAMP/59/2014-KPT dated 02 January 2015:

- (i). **The existing caption under Schedule 3 - Cargo Handling Charges prescribed in upfront tariff schedule for development of Dry Bulk Terminal off Tekra near Tuna in the Order No.TAMP/42/2009-KPT dated 17 August 2010 is modified as follows:**

“The cargo handling charges shall be payable on the manifested cargo directly by the importers / exporters or their authorized agent at the rates specified below.”

- (ii). **The existing caption under Schedule 3 - Cargo Handling Charges prescribed in SOR notified in the name of the AKBTPPL in the Order No.TAMP/59/2014-KPT is modified dated 02 January 2015 is modified as follows:**

“The cargo handling charges shall be payable on the manifested cargo directly by the importers / exporters or their authorized agent at the rates specified below.”

12. Accordingly, this Authority disposes of the representation of the AKBTPPL dated 18 January 2018 and email dated 18 January 2018.

(T.S. Balasubramanian)
Member (Finance)