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Tariff Authority for Major Ports

G.No.275

New Delhi,

12 August 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 amends the tariff Order No. TAMP/15/2015-KPT dated 15 May 2015 passed for fixation of Reference tariff for operation and maintenance of container terminal at Berth Nos.11 and 12 in Kandla Port as Container Terminal on PPP mode on "As is where is" basis under revised Guidelines for Determination of Tariff for Port Projects at Major Ports, 2013 as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/15/2015-KPT

QUORUM:

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

O R D E R

(Passed on this 30th day of July 2015)

This case relates to the review of the Order No. TAMP/15/2015-KPT dated 15 May 2015 passed by this Authority fixing reference tariff for upgradation, operation and maintenance of container terminal at Berth Nos.11 and 12 at Kandla Port Trust (KPT).

2. This Authority has vide its Order No.TAMP/15/2015-KPT dated 15 May 2015 approved reference tariff for container terminal at berth nos.11 and 12 at KPT. The said Order was notified in the Gazette of India on 22 June 2015 vide Gazette No.226.

3.1. With reference to the said Order, the Ministry of Shipping (MOS) has faxed us a letter no.PDF/ULA/KCT(NEW)/2015/05 dated 15 June 2015 of M/s.United Liner Agencies of India (Private) Ltd. (ULAIPL), one of the prospective bidders of the Container Terminal at Berth Nos.11 and 12 at KPT addressed to the KPT with a copy endorsed to the MOS seeking our comments.

3.2. A copy of the said letter of ULAIPL was forwarded to KPT seeking its comments on the points made by ULAIPL with reference to para 2 as it related to reference tariff notified by the Authority by the Order dated 15 May 2015.

3.3. In response, the KPT has vide its letter dated 2 July 2015 furnished its comments on para 2 of ULAIPL. A summary of the points made by ULAIPL at para 2 of its letter dated 15 June 2015 and comments of KPT thereon is tabulated below:

Comments of ULAIPL at para 2 of its letter dated 2 July 2015 addressed to KPT and endorsed to the MOS faxed by the MOS.	Comments of KPT
Reference Tariff based on JNPT/Tuna Tekra rates has been issued by TAMP on 15 May 2015. However the rates proposed are conditional. It is mentioned in the Order that 'if at any point of time during the project period, the share of coastal containers to be handled by the BOT Operator significantly reduces as compared to the foreign containers, the reference tariff approved by the Authority should be reviewed and KPT being the licensor port should ensure that the reference tariff is reviewed. The KPT therefore, should make the above position abundantly clear in the bid document at the time of bidding stage itself to all the prospective bidders as well as in the concession agreement.' Such an Order is quite unprecedented and is not supported by the existing guidelines issued by the Government. This is also against the spirit of fixing the tariffs up front which is subject to revision only based on indexation. Now this Order has caused uncertainty about the tariffs. Moreover it actively disincentivises the Operator from bringing in mainline vessels and encourages handling of only coastal vessels. We are sure that the port doesn't want such a situation. TAMP has also not agreed to reduce the productivity parameter in respect of	Para 14 (ix) of TAMP Order dated 15 May 2015 say about the clause of review of reference tariff in case the share of coastal containers to be handled by the BOT Operator significantly reduces as compared to the foreign containers. In this regard, it is submitted that the Tariff Guidelines 2013 do not support above contention of the TAMP. Further, the prospective bidder has also raised its concern for the same. Accordingly, TAMP may review the matter. KPT had proposed the productivity parameter as 20 moves per hour justifying the same. Moreover, the prospective bidder has also supported the productivity parameter of 20 moves/ hour. Hence, TAMP may review the matter again. Regarding the storage tariff, it is to state that the same have been considered as reference tariff adopted in JNPT.

container productivity from 25 moves per hour to 20 moves per hour even after the port has given full justification as to how such high productivity rates cannot be achieved with the old equipment. The storage charges prescribed are also very high adding to unattractiveness of the project to the Trade. The stand taken by TAMP that reference tariffs when adopted from other ports have to be adopted in toto is also not correct as there any number Orders issued by TAMP where variations have been allowed.	
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3.4. Apart from above, other submissions made by ULA IPL in its letter dated 15 June 2015 addressed to KPT, are summarised below:

- (i). As regards the equipment that is going to be handed over to the Operator it is necessary for the port to carry out a proper condition survey and estimation of the costs under engine-on condition as quite some time has passed since last surveys were done, that too in cold condition. While calculating the license fees for the equipment, the revised repair cost needs to be deducted from the WDV of the equipment and the interest charged at the 10 year Government of India Bond rates. As traffic build up will take over a period of time, the high licence fee will result in huge negative cash flows during the initial years impinging on the very viability of the Project and therefore the licence fees needs to be fixed at a lower level during the initial years.
- (ii). Draft is another critical issue. There is also no firm commitment from the port when the dredging activity will be undertaken to provide the draft of 13 m. alongside the berth and whether such draft will be available at all the times. The port should agree to include 'dredging' as a part of the 'Supporting Project Infrastructure' in the draft Concession Agreement as one of the Conditions Precedent to be fulfilled by the port. This would commit the port to definite timelines.
- (iii). The port will have to adopt a pro-active role in attracting the container trade back to the port. If necessary, they have to show their positive inclination by announcing advance rebates/discounts on vessel related charges as these charges are much high than at Mundra.
- (iv). The other points raised regarding priority berthing to container vessels, priority movement to container trains, notification of a separate railway code for Kandla Port, CFS Operations are equally important and need to be considered.
- (v). It is reiterated that unless these critical issues are addressed, the Operator will be completely exposed to huge financial risk and the prospective bidders will be deterred from participating in the Project. We would, therefore, earnestly request KPT to carry out the necessary changes in the RFP Documents before they are issued to enable us to have a relook at the Project.

4.1. It is seen that the points raised by ULA IPL other than its submissions in para 2 which is tabulated in para 3.3. above are not found relevant to the reference tariff fixed by the Authority in the tariff Order dated 15 May 2015. The reference tariff approved by the Authority is adoption of JNPT upfront tariff as proposed by the KPT and does not involve any tariff calculation.

4.2. The exercise here is, therefore, limited to the points raised by ULA IPL at para 2 of its letter dated 2 July 2015 for and the views of KPT thereon to review the Order dated 15 May 2015 which are discussed hereunder.

(i). Objection raised on the review clause prescribed in para 14(ix) of the Order:

- (a). Para 14 (ix) of the Order dated 15 May 2015 is reproduced below for case of reference:

"Most of the containers to be handled at these two berth are expected to be coastal container for which tariff applicable is 60% of the tariff prescribed for foreign cargo as per the coastal concession policy of the Government and feeder vessels. This means the successful bidder would not be in a position to realize revenue at the rates proposed by the KPT. The KPT has not refuted the submissions made by the prospective bidders and user organizations i.e. KPSAA, though neither the KPT nor the prospective bidders have indicated the share of coastal traffic. The above position is, therefore, solely relied upon. However, if at any time during the project period, the share of the coastal container traffic significantly comes down which in the view of the KPT may lead to windfall gain to the BOT operator, then in that case the KPT should ensure that the reference tariff fixed by this Authority in this exercise is got reviewed by the Competent Authority. The KPT should also make the above position abundantly clear in the bid document at the time of bidding stage itself to all the prospective bidders as well as in the Concession Agreement and it will be the sole responsibility of the land lord port KPT to ensure that a proposal is filed before the Competent Authority to get the reference tariff reviewed."

- (b). The ULAIPL has objected the condition prescribed in para 14 (ix) of the Order dated 15 May 2015 which stipulates review of the approved reference tariff if at any point of time during the project, the share of coastal container to be handled by the BOT operator significantly reduces as compared to foreign container. The ULAIPL has argued that such conditional reference tariff is not supported by the existing guidelines of the Government and is also against the provision in the guidelines wherein upfront/ reference tariff fixed by the Authority is subject to revision only based on indexation. ULAIPL is of the view that the above decision of this Authority will disincentivise the operator from bringing in main vessels and it will encourage handling of coastal vessels only.
- (c). The reasons for prescribing the said condition are elaborately explained in para 14 (ix) of the Order dated 15 May 2015. It is admitted that the tariff guidelines 2013 do not prescribe clause for mid-term review of the reference tariff approved by this Authority.

As regards the point made by the KPT now that the review clause is not supported by the tariff guidelines of 2013 it is, relevant to mention that the landlord port, KPT itself in its proposal for fixation of reference tariff for Single Point Mooring (SPM) in Gulf of Kutch had proposed mid-term review of the reference tariff approved by this Authority if the actual traffic handled by SPM exceed optimal capacity of 12 MTPA. This Authority has, based on the proposal of KPT, incorporated the provision for mid-term review while fixing reference tariff for SPM operation in the Gulf of Kutch vide Order No. TAMP/60/2014-KPT dated 2 January 2015. This Authority has prescribed provision for mid-term review in few other cases as well as based on the proposal of the concerned port trust for reasons cited by the port. Further, in few reference tariff cases where this Authority has certain element of doubt on the estimates of the port, this Authority has, for reasons recorded in the Order, prescribed provision for mid-term review of upfront/ reference tariff approved by this Authority. The intention of inclusion of mid-term review of reference/ upfront tariff provision is only to ensure that the operator does not make windfall gain

by relying on the estimates of the port where there is certain element of uncertainty/ doubt in the estimates.

In the instant case, for reasons cited in para 14 (ix) of the Order dated 15 May 2015, this Authority has provided for review of the reference tariff approved in the said Order. As stated in the said Order, it is for the licensor port i.e. KPT to file the proposal for review of the reference tariff before the Competent Authority and get the reference tariff approved for the BOT operator reviewed. The KPT has concurred with the concern of ULAIPL on the review clause and has requested to review the said clause. Since the provision of mid-term review has to be implemented by the licensor port KPT and KPT itself is not in favour of this review clause as is evident from the comments furnished by the KPT, the para 14 (ix) of the Order dated 15 May 2015 prescribing mid-term review provision is deleted. Consequently, paragraphs 14 (x) to 14 (xiv) of the said Order are renumbered as 14 (ix) to 14 (xiii).

(ii). Productivity parameter of 25 moves/ hour/ crane prescribed in the Order instead of 20 moves/ crane/ hour:

- (a). Another point made by ULAIPL in para 2 is about productivity parameter of 25 moves per hour per crane prescribed by this Authority in the said Order as against 20 moves per hour per crane proposed by the KPT.
- (b). The KPT has stated that the productivity parameter of 20 moves per hour per crane was proposed by it and the same was justified and was supported by the prospective bidder as well. The KPT has, therefore, requested this Authority to review the matter again.
- (c). In this regard, it is relevant to mention that the justification furnished by the KPT as well as views of the prospective bidder in this matter were examined by this Authority while passing the Order dated 15 May 2015. The reasons for prescription of performance standard of 25/ moves/ hour/ crane are elaborately furnished in para 14 (xiii) (b) of the Order. The proposal of KPT was for adoption of upfront tariff fixed for JNPT. As recorded in the said para, the upfront tariff fixed for JNPT is based on the productivity of 25 moves/ per crane/ per hour. If the upfront tariff of JNPT is to be adopted, the performance standard also has to be adopted in toto as considered for arriving at the JNPT upfront tariff. If the reduced performance standard of 20 moves per crane per hour is to be prescribed, then the tariff adopted also needs to be tinkered with (i.e.) reduced which is not proposed by the KPT nor envisaged in the Tariff Guidelines of 2013. Therefore, the performance standard of 25 moves per crane per hour was prescribed. This Authority, in view of the reasons elaborately brought out in para 14 (xiii) (b) of the Order, is not in a position to review the performance standards approved in the said Order.

(iii). Storage charges:

- (a). The third point made by ULAIPL in para 2 is on the storage charges. The ULAIPL has stated that the storage charges prescribed by this Authority is very high making the project unattractive to the trade.
- (b). It is relevant to mention that the storage charge is a new point raised by them. This point was not raised by the ULAIPL during the consultation proceedings which culminated into the tariff Order dated 15 May 2015. It is relevant to state that the reference tariff approved in the Order of 15 May 2015 was based on the proposal filed by KPT for adoption of the upfront tariff approved for container terminal at JNPT. The KPT has also not supported the point made by ULAIPL on the storage charge. In fact,

the KPT has also stated that the upfront storage tariff for container terminal at JNPT has been adopted for its project.

- (c). Since the reference tariff approved by this Authority is based on the proposed of KPT for adoption of the upfront tariff fixed for the container terminal of JNPT, there is no case to review the storage charge approved in the Order dated 15 May 2015.
- (d). The ULAIPL has stated that the stand taken by this Authority that upfront tariff to be adopted from other ports has to be in toto is incorrect and that there are number of Orders where this Authority has allowed variation on this. It is relevant to mention that on a similar mention made by KPT during the processing of the case, this Authority has elaborately explained the position in para 14 (vi) at the said Order. Therefore, the point made by ULAIPL is not revisited here.

4.3. Comments of this Authority on the above lines have been furnished to the MOS vide our letter No. TAMP/15/2015-KPT dated 14 July 2015.

5.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority based on the letter of the KPT dated 2 July 2015 deletes para 14 (ix) of the Order No.TAMP/15/2015-KPT dated 15 May 2015 and paragraph nos.14 (x) to 14 (xiv) of the said Order are renumbered as 14 (ix) to 14 (xiii).

5.2. Since this Order is an amendment to the Order dated 15 May 2015, the Order No.TAMP/15/2015-KPT dated 15 May 2015, should be read along with this Order.

(T.S. Balasubramanian)
Member (Finance)