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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 195

New Delhi,

28 May 2015

NOTIFICATION

In exercise of the powers conferred under Sections 48 and 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from IFFCO Kisan Bazar and Logistics Limited (IKBL) for setting provisional tariff for its barge jetty at Kandla Port Trust (KPT), as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/55/2013-KPT

The IFFCO Kisan Bazar and Logistics Limited

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Applicant

QUORUM

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

ORDER

(Passed on this 15th day of May 2015)

This case relates to a proposal received from IFFCO Kisan Bazar and Logistics Limited (IKBL) for setting tariff for barge jetty at Kandla Port Trust (KPT).

2.1. The IKBL had earlier filed a proposal vide its letter dated 8 November 2013 for fixation of the tariff under the tariff guidelines of 2008 for fixation of upfront tariff.

2.2. Subsequently, the IKBL had filed the proposal vide its letter 26 April 2014 under tariff guidelines of 2005. Since the proposal was not filed in the prescribed formats, the IKBL was advised vide our letter dated 2 May 2014 to file the cost statements in the prescribed formats. The IKBL has, thus, vide its letter dated 12 June 2014 filed its proposal in the prescribed format.

2.3. Since the proposal of IKBL did not include the conditionalities governing the proposed Scale of Rates (SOR), the IKBL was requested to furnish the proposed SOR while acknowledging the proposal, vide our letter dated 2 July 2014. The IKBL vide its e-mail dated 9 July 2014 has furnished the proposed SOR along with conditionalities.

3. The IKBL has entered into a Concession Agreement (CA) on 17 February 2011 with KPT for unloading fertilisers and fertiliser raw materials for captive use for a period of 30 years. Some of the main provisions of the CA which are relevant for this case are given below:

- (i). Article 8.1 of the CA, states that in case jetty is idle, "other cargo" can be handled for other users as directed by the Concessioneing Authority (KPT) in order to optimise the use of the jetty.
- (ii). Article 1.1 of the CA has defined "Other cargo" as the dry cargo of other users excluding the containerized cargo.
- (iii). Article 8.1 of the CA deals with the levy and recovery of tariff.

4. A copy of the IKBL proposal alongwith SOR was circulated to KPT and all concerned users/ user organizations, as per the list furnished by the IKBL for comments. None of the users / user organizations except KPT have furnished comments, despite reminders. The comments of KPT vide its letter dated 26 August 2014 was forwarded to IKBL as feedback information. The IKBL vide its letter dated 16 April 2015 has furnished its reply on the comments of KPT.

5. Based on the preliminary scrutiny of the proposal, additional information / clarifications were sought from both, IKBL and KPT vide our letters dated 13 April 2015

6.1. A joint hearing on the case in reference was held on 16 April 2015 at the premises of KPT. At the joint hearing, the IKBL only has made their submissions.

6.2. As decided at the joint hearing, both the KPT and IKBL were requested vide our letters dated 22 April 2015 to furnish their response to the queries raised by us vide our letters of even number dated 13 April 2015. The IKBL and the KPT have furnished their response vide their

letters dated 22 April 2015 and 5 May 2015 respectively. The IKBL while replying to our queries, has also filed a revised proposal alongwith scale of the rates under a cover of its letter dated 22 April 2015.

7. The tariff proposed by IKBL in its revised proposal is as given below:

Particulars	Old Proposal	New Proposal dated 22.4.15
Dry Bulk	100.03	63.30
Bagged Cargo	122.50	78.30
Timber Cargo	122.50	78.30

8.1. A copy of the revised proposal was forwarded to KPT and all the concerned users/ user organisations vide our letter dated 30 April 2015 to furnish their comments by 06 May 2015. None of the users/ user organizations and KPT have forwarded any comments on the revised proposal.

8.2. In the revised proposal, the IKBL has also requested this Authority to approve the proposed tariff for handling of Third Party Cargo on provisional basis till the final rates are fixed by this Authority. Keeping in view that the current exercise is for approving provisional tariff sought by IKBL based on its revised proposal dated 22 April 2015, the submissions of IKBL in its earlier proposals of 26 April 2014, 12 June 2014 and 09 July 2014 are not brought out here.

9. Since the exercise here is limited to approving tariff for barge jetty for handling third party cargo on provisional basis, as proposed by IKBL, the queries raised by us and the reply thereon by IKBL and KPT are not dealt with at this juncture.

10.1. However, it is relevant to bring out two vital queries raised by us and reply furnished by both, IKBL and KPT relating to:

- (a). The cargo profile of third party cargo for which tariff is proposed.
- (b). IKBL to exclude revenue share payment from tariff computation and the proposed tariff.

10.2. As regards to the point 10.1.(a) above, it is relevant to state that the IKBL has sought approval for tariff for handling Dry bulk cargo, bagged cargo and the timber log. Article no 8.1 of the Concession Agreement (CA) entered between IKBL and KPT, allows IKBL to handle other cargo as directed by KPT. The term "Other Cargo" defined under Article 1.1. of the CA states that other cargo means "dry cargo excluding the containerized cargo". The IKBL and KPT both were requested to clarify whether the proposal of IKBL to handle bagged cargo and timber log and seeking tariff for the same is in line with the provision of the C.A and also to give reference of the relevant clause of the C.A. which allows IKBL to handle this two cargo categories (bagged cargo and timber log).

10.3. In context to this, the IKBL vide its letter dated 22 April 2015 has clarified that the Captive Cargo is falling under Dry Bulk Category and the third party cargo can be "dry cargo excluding containerized cargo" as defined. Dry cargo doesn't mean dry bulk cargo only. By dry cargo, the Concession Agreement only refers to non-liquid and non-containerized cargo.

10.4. The KPT vide its email dated 5 May 2015 has clarified that as per the CA, the "Other cargo" means the dry cargo of other users excluding the containerized cargo. Therefore, the dry cargo other than containerized cargo also includes the bagged and timber logs. Hence, with respect to the consideration of cargo categories, the proposal is in line with Concession Agreement.

10.5. (a). As regards to the revenue share, the IKBL has agreed to our advice rendered and has confirmed that it has excluded 25% revenue charges payable by it to KPT from the estimate of expenses and also for computation of the revised proposed tariff.

- (b). For arriving at the proposed rate also, the IKBL has rightly not added revenue share at 25% of cargo handling charges payable by it to KPT in view of our queries raised. Further, the note proposed by it earlier that the user will, in addition to the wharfage rate prescribed for IKBL, pay wharfage rates prescribed in the SOR of KPT is deleted in view of the queries raised by this Authority.

11.1. Thus, based on the clarification furnished by IKBL and KPT, the cargo categories for which tariff is proposed is seen to be in line with the C.A. The clarification furnished by IKBL is relied upon. Revenue share payable to KPT is also excluded from the computation of the proposed tariff in view of the advise rendered by this Authority in compliance with clause 2.8.1. of 2005 tariff guidelines.

11.2. As stated earlier, IKBL has sought approval for the proposed tariff filed in its revised proposal dated 22 April 2015 on provisional basis for handling of the third party cargo at barge jetty. The IKBL had made the same request at the Joint hearing also.

12.1. As per clause 2.12 of the Tariff Guidelines of 2005, when a new facility is commissioned or existing facilities are privatized by any port trust, the initial tariff to be allowed will not exceed the existing tariff level at the same port for comparable facilities. If such comparison is not available, prevailing tariff at comparable nearby port will be considered as the reference level. The initial tariff so adopted will be valid for the first year of operation where after revised tariff will be fixed based on the admissible cost and investment of the private operator. If it is established by the private operator that adopting the existing tariff of port trust will cause hardship to him in view of a higher level of investment made, then a separate cost based tariff will be allowed to him right from the commencement of commercial operations.

12.2. The IKBL has not proposed to adopt the existing tariff of KPT or of any other nearby port. It is relevant here to mention that the Scale of rates for the KPT was fixed taking into consideration the cost position reflected by the port which also involved cross subsidization between various services/ activities and cost of social obligation of the Port Trusts which may not be relevant to the IKBL.

12.3. Since the proposal of IKBL seeks approval of proposed tariff on provisional basis and also recognizing that IKBL at joint hearing has agreed to refund any excess collection if the adhoc rates approved by this Authority is higher than the final rates approved, this Authority is inclined to approve the rates proposed by IKBL for the present on provisional basis without going in to indepth of the cost position and additional information/clarification furnished by IKBL.

12.4. Accordingly, the Scale of Rates as proposed by IKBL is approved by this Authority on provisional basis subject to the condition that if the final rates approved by this Authority are lower than the provisional rates, the IKBL will refund the excess collection to the concerned users, as agreed by it.

12.5. The draft SOR proposed by IKBL is, however, modified with respect to following items:

- (i). The IKBL has proposed rate for other dry bulk cargo as ₹63.30 per tonne, bagged cargo ₹78.30 per tonne and timber log ₹78.30 per tonne. The IKBL has proposed a separate note stating that 60% of the rate applicable for the foreign cargo will be levied on cargo eligible for coastal concession. Since the IKBL has not incorporated separate rate for coastal cargo in the SOR, the rates for coastal cargo at 60% of the rates prescribed for foreign cargo is prescribed in the SOR following the coastal concession policy of the Government of India.
- (ii). Penal rate of interest proposed by IKBL at note no.1 under Schedule 1.2 – General terms and conditions has been modified to reflect the prevailing Prime Lending Rate of State Bank of India at 14.60% plus 2% i.e. 16.60%.

- (iii). The definition of coastal cargo is slightly modified by adding the words "Directorate General of Shipping / Competent Authority) in line with the Order No.TAMP/52/2014-Genl passed by this Authority.
- (iv). A last note in Schedule 1.2 – General terms and conditions of the proposed SOR states that "Further the royalty payable to KPT shall be calculated on ceiling rates as approved by the TAMP as revised from time to time". Since, the payment of royalty flows from the Concession agreement entered between KPT and IKBL and is not relevant for fixation of tariff of IKBL which is governed by tariff guidelines of 2005, the proposed note is deleted from the SOR.
- (v). The IKBL has proposed a general note under schedule 4 relating to the annual indexation in the tariff prescribed in its SOR. The annual indexation in the tariff is relevant for tariff fixation under 2008 and 2013 guidelines. Since the IKBL is governed by the tariff guidelines of 2005, annual indexation in the tariff does not arise. Hence, the proposed general note 4 is deleted from the SOR.
- (vi). The draft Scale of Rates proposed by the IKBL contains a provision governing the levy of Berth hire and other vessel related charges. The KPT has suggested vide its letter dated 15 May 2015 modification to the provision proposed by the IKBL. The comments of IKBL on the modification suggested by KPT are being sought. Therefore, it may not be appropriate to approve the proposed provision without taking into account the views of IKBL on the modification suggested by KPT. Hence, the proposed provision is not approved.

12.6. Generally, the Scale of Rates notified by this Authority comes into effect after expiry of 30 days from the date of notification of the Order in the Gazette of India. Since no rates are available for IKBL to handle third party cargo at the barge jetty, the rates approved by this Authority on provisional basis is made effective immediately from the date of notification of the Order in the Gazette of India.

13.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the Scale of Rates for handling third party cargo at the barge jetty of IKBL at KPT attached as **Annex - I** on provisional basis as an interim tariff arrangement.

13.2. The rates approved will come into effect immediately from the date of the notification of the Order in the Gazette of India.

13.3. The Scale of Rates approved by this Authority is an interim arrangement till the final rates are approved by this Authority. The IKBL shall refund the excess collection if the final rates to be approved by this Authority are lower than the interim tariff approved.

(T.S. Balasubramanian)
Member (Finance)

IFFCO KISAN BAZAR & LOGISTICS LIMITED
SCALE OF RATES

1. Definitions

In this Scale of Rates unless the context otherwise requires, the following definitions shall apply:

- (i). **"Coastal Vessel"** means any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal license issued by the Director General of Shipping / Competent Authority.
- (ii). **"Foreign Vessel"** means any vessel other than a coastal vessel.
- (iii). **"Free period"** shall mean the period during which cargo shall be allowed storage free of demurrage charges/ ground rent and this period shall exclude Customs notified holidays and Terminal's non-operating days.
- (iv). **"Port"** shall mean Kandla Port Trust.
- (v). **"Per day"** means per calendar day unless otherwise stated.
- (vi). **"TAMP"** shall mean the Tariff Authority for Major Ports constituted under Section 47A of the Major Ports Act, 1963.
- (vii). **"Tonne"** shall mean one metric tonne or 1,000 kilograms or one cubic metre.

2. General Terms and Conditions

- (i). Interest on delayed payments / refunds:
 - (a). The user shall pay penal interest on delayed payments under this Scale of Rates. Likewise, the terminal operator shall pay penal interest on delayed refunds.
 - (b). The user shall pay penal interest on delayed payments of any charge under this Scale of Rates. The rate of interest will be 16.60%. Likewise, the IKBL shall pay penal interest @ 16.60% per annum on delayed refunds.
 - (c). The delay in refunds will be counted only 20 days from the date of completion of services or on production of all the documents required from the users, whichever is later.
 - (d). The delay in payments by the users will be counted only 10 days after the date of raising the bills by the Terminal operator. This provision shall, however, not apply to the cases where payment is to be made before availing the services where payment of charges in advance is prescribed as a condition in this Scale of Rates.
- (ii).
 - (a). The cargo related charges for all coastal cargo, other than thermal coal, POL including crude oil, iron ore and iron pellets, should not exceed 60% of the normal cargo / container related charges.
 - (b). In case of cargo related charges, the concessional rates should be levied on all the relevant handling charges for ship-shore transfer and transfer from / to quay to/ from storage yard including wharfage.
 - (c). Cargo from a foreign port, which reaches an Indian Port 'A' for subsequent transshipment to Indian Port 'B' will be, levied the concessional charges relevant for its coastal voyage. In other words, cargo from / to Indian ports carried by vessel permitted to undertake coastal voyage will qualify for the concession.

- (d). The charges for coastal cargo / vessels shall be denominated and collected in "Indian Rupee".
- (iii). All charges worked out shall be rounded off to the next higher rupee on the grand total of the bill.
- (iv). Users will not be required to pay charges for delays beyond reasonable level attributable to the terminal operator.
- (v). (a). The rates prescribed in the Scale of Rates are ceiling levels: likewise, rebates and discounts are floor levels. The terminal operator may, if it so desires, charge lower rates and / or allow higher rebates and discounts.
- (b). The terminal operator may also, if he so desires rationalize the prescribed conditionalities governing the application of rates prescribed in the Scale of Rates if such rationalization gives relief to the user in rate per unit and the unit rates prescribed in the Scale of Rates do not exceed the ceiling levels.
- (c). The terminal operator should, however, notify the public such lower rates and / or rationalization of the conditionalities governing the application of such rates and continue to notify the public any further changes in such lower rates and / or in the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rates notified by the TAMP.
- (vi). For the purpose of calculating the dues the unit by weight shall be 1 tonne or 1000 kilograms, the unit by volume measurement shall be 1 cubic metre and the unit by capacity measurement for liquids in bulk shall be 1000 litres.
- (vii). In calculating the gross weight or measurement by volume or capacity of any individual item, fractions upto 0.5 shall be taken as 0.5 unit and fractions of 0.5 and above shall be treated as one unit, except where otherwise specified.

3. Cargo handling charges:

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

(Rates in ₹)

Sr. No.	Commodity	Unit	Foreign Cargo	Coastal Cargo
(a).	Other dry bulk	MT	63.30	38.00
(b).	Steel and Bagged cargo	MT	78.30	47.00
(c).	Timber Logs	MT	78.30	47.00

Note:

The handling charges prescribed above are only unloading of the cargo from the Barge and loading on to trucks in respect of import cargo and vice-a-versa for export cargo.
