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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 21

New Delhi,

19 January 2015

NOTIFICATION

In exercise of the powers conferred under 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 M/s.Adani Kandla Bulk Terminal Private Limited for notification of Scale of Rates for Dry Bulk Terminal developed off Tekra near Tuna outside Kandla creek on BOT basis under PPP model with Kandla Port Trust 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 Private Limited

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Applicant

QUORUM:

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

ORDER

(Passed on the 2nd day of January 2015)

This case relates to the proposal received from M/s.Adani Kandla Bulk Terminal Private Limited (AKBTPL) for notification of Scale of Rates for Dry Bulk Terminal developed off Tekra near Tuna outside Kandla creek on Built, Operate and Transfer (BOT) basis under Public Private Partnership (PPP) model with Kandla Port Trust (KPT).

2.1. The AKBTPL vide its letter no.AKBTPL-OUT/2014-15/038 dated 14 October 2014 has requested this Authority to notify its Scale of Rates for Dry Bulk Terminal being developed off Tekra near Tuna outside Kandla creek on BOT basis under PPP model with KPT. The main submissions made by the AKBTPL are summarised below:

- (i). The AKBTPL is the concessionaire for development of Dry Bulk Terminal off Tekra near Tuna outside Kandla Creek. They have entered into Concession Agreement with KPT on 27 June 2012. This agreement is valid for 30 years from the date of award of concession.
- (ii). Article 8.1 of the said Concession Agreement stipulates that the concessionaire shall be entitled to recover tariff from the users of the project facilities and services as per the tariff Order dated 17 August 2010 passed by this Authority fixing upfront tariff for construction of Dry Bulk Terminal off Tekra near Tuna at port of Kandla.
- (iii). The AKBTPL plans to commence the operations in November 2014. Therefore, rates are to be notified in their name in order to commence operations.
- (iv). In accordance with the Upfront Tariff Guidelines of 2008, this Authority has passed an Order No.TAMP/42/2009-KPT dated 17 August 2010 for Dry Bulk Terminal at KPT. The said Order was notified vide Gazette Notification No.285 on 2 November 2010. As per the said Order, the indexation in tariff is required under clause 2.8 of the 2008 Tariff Guidelines. Indexation factor of 22.52% for the financial year 2014-15 is intimated by this Authority.

2.2. The AKBTPL has, accordingly, applying the applicable escalation factor of 22.52% arrived at the following proposed ceiling rates for the aforesaid project and has requested to notify the rates:

- (i). Berth Hire Charges:

Rate per GRT per hour or part thereof

Vessels	Foreign Going Vessel (in ₹)		Coastal Vessel (in ₹)	
	Approved by TAMP vide Order dated 17.8.2010	Proposed (With escalation of 22.52%)	Approved by TAMP vide Order dated 17.8.2010	Proposed (With escalation of 22.52%)
All vessels	0.49	0.60	0.29	0.36

(ii). Cargo Handling Charges:

Sl. No.	Commodity	Rate in ₹ (Per Tonne)			
		Foreign Going Vessel (in ₹)		Coastal Vessel (in ₹)	
		Approved by TAMP vide Order dated 17.8.2010	Proposed (With escalation of 22.52%)	Approved by TAMP vide Order dated 17.8.2010	Proposed (With escalation of 22.52%)
(i).	Foodgrains	155.27	190.24	93.16	114.14
(ii).	Salt	155.27	190.24	93.16	114.14
(iii).	Fertilizer	155.27	190.24	93.16	114.14
(iv).	Fertilizer raw materials	155.27	190.24	93.16	114.14
(v).	Coal	155.27	190.24	93.16	114.14

(iii). Storage Charges:

Commodity	(Rate in ₹ per MT per day)					
	Approved by TAMP vide Order dated 17.8.2010			Proposed (With escalation of 22.52%)		
	Rate for 1 st day to 10 th day	Rate for 11 th day to 20 th day	Rate for 21 st onwards	Rate for 1 st day to 10 th day	Rate for 11 th day to 20 th day	Rate for 21 st onwards
All types of cargo	2.07	4.14	6.21	2.54	5.07	7.61

(iv). Miscellaneous Charges:

Sl. No.	Commodity	Rate in ₹ (per tonne)	
		Approved by TAMP vide Order dated 17.8.2010	Proposed (With escalation of 22.52%)
(a).	All types of cargo	8.28	10.14

2.3. The AKBTPPL has requested to notify the Scale of Rates for its dry bulk terminal off Tekra near Tuna.

3.1. A copy of AKBTPPL's proposal dated 14 October 2014 was forwarded to the KPT vide our letter dated 22 October 2014 with a request to ascertain the date of commencement of operation from the operator and also furnish its comments on the proposal of AKBTPPL. Further, the AKBTPPL was also requested vide our letter dated 22 October to indicate the expected date of the commencement of operations with a copy of completion certificate issued by the Independent Engineer.

3.2. After reminder, the AKBTPPL vide its letters dated 11 November 2014 and 12 November 2014 has stated that they are in the process of procuring the Completion Certificate from the Independent Engineer and hence requested this Authority to notify the Scale of rates considering the urgency of the matter to handle trial vessel.

3.3. In this context, the AKBTPPL, vide our letter dated 18 November 2014, was requested to furnish a copy of the provisional certificate of commencement of operation from the Independent Engineer and also indicate the date of the commencement of commercial operations. The AKBTPPL was also requested to furnish a copy of the (final) completion certificate from the Independent Engineer on receipt of the same by AKBTPPL. The KPT was also, vide our letter dated 18 November 2014, reminded to respond to our letter dated 22 October 2014.

4.1. The KPT vide its letter dated 21 November 2014 has intimated that commercial operation is expected to start from 25 November 2014 as per communication received from AKBTPPL. They have further stated that the proposal of AKBTPPL has been examined and have pointed out that the Scale of Rates of AKBTPPL should include all the terms and conditions for each of the charges as approved in the TAMP Order.

4.2. The AKBTPL vide its email dated 30 December 2014 has submitted a copy of the Provisional Certificate issued by the Independent Engineer (IE). It is relevant to mention here that IE has declared project is provisionally fit for commercial operation on 18 December 2014.

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

- (i). This Authority had passed an Order No.TAMP/42/2009-KPT dated 17 August 2010 fixing upfront tariff based on the proposal filed by the Kandla Port Trust (KPT) for the Dry Bulk Terminal off Tekra near Tuna at Port of Kandla to be developed under PPP mode in accordance with the guidelines for upfront tariff setting for PPP projects at Major Ports which was notified in the Gazette of India on 2 November 2010 vide Gazette No.285. The AKBTPL has entered into concession agreement with KPT on 27 June 2012 for a period of 30 years.
- (ii). Clause 2.9.1. of the Tariff Guidelines of 2008 for fixation of upfront tariff requires the private operator to approach this Authority for notification of the Scale of Rates containing ceiling rates applicable to operations before commencement of commercial operations. Accordingly, the AKBTPL has approached this Authority with a request to notify the Scale of Rates as required under the Tariff Guidelines of 2008. Further, as per Clause 2.9.2. of tariff guidelines of 2008, the Scale of Rates to be framed by this Authority shall be in line with the tariff caps prescribed for the port and included in the bid document subject to indexation explained in Clause 2.8. Such Scale of Rates and statement of conditions shall be notified by this Authority in the Gazette of India as required by the Major Port Trusts Act, 1963.
- (iii). As mentioned earlier, the AKBTPL vide its email dated 30 December 2014 has submitted provisional certificate. The provisional certificate of the Independent Engineer furnished by AKBTPL states that the project is provisionally declared fit for entry into commercial operation on 18 December 2014. In view of the above position and also recognising that the KPT has also stated that the commercial operations are expected to commence from 25 November 2014, this Authority is inclined to entertain the proposal of AKBTPL for notification of the Scale of Rates approved in August 2010 in its name subject to adjustment with reference to the indexation of the rates so approved to the WPI to the extent of 60%. The AKBTPL is, however, advised to furnish a copy of the (final) completion certificate (to be) issued by the Independent Engineer immediately on its receipt to this Authority.
- (iv). As per clause 2.9.2. of the Tariff Guidelines of 2008, the Scale of Rates to be framed by this Authority for the private operator as per Clause 2.9.1 should be in line with the tariff caps prescribed for the Port and included in the bid document, subject to indexation as explained earlier. Article 8.1 of the Concession Agreement (C.A.) entered between the KPT and AKBTPL governs levy of the tariff. As per Article 8.1 of the License Agreement, the Concessionaire i.e. AKBTPL shall be entitled to recover tariff from the users of the Project Facilities and Services as per the Tariff Notification annexed as Appendix-12. It is seen that Appendix -12 appended to C.A. gives reference to the Notification details of the Upfront Tariff approved by this Authority vide Order No.TAMP/42/2009-KPT dated 17 August 2010.
- (v). The base year for the upfront tariff and the corresponding annual escalation with effect from 1 April 2014 were already communicated to all the Major Port Trusts including KPT vide our letter No.TAMP/12/2009-Misc. dated 1 April 2014. As per General note to schedule (2) to (5) of Scale of Rates of the upfront tariff Order dated 17 August 2010 fixing upfront tariff for the facility in reference, tariff caps have to be indexed to inflation to an extent of 60% of the variation in the WPI occurring between 1 January 2010 and 1 January of the relevant year. Accordingly, the escalation factor to be applied in the case in reference is 22.52% as per our above letter dated 1 April 2014.

- (vi). With reference to the indexation of the upfront tariff fixed vide Order dated 17 August 2010 as required under clause 2.8. of the 2008 Guidelines, it is noteworthy that the AKBTPL has arrived at the proposed rate by applying the applicable escalation factor of 22.52% on the tariff caps notified in August 2010. The proposed rates given by AKBTPL has been verified and found to be correct. It is, however, relevant to state that, the AKBTPL has not forwarded the draft Scale of Rates taking the upfront tariff Schedule approved in the Order of 17 August 2010 and updating it with indexed rates arrived by it applying the escalation factor of 22.52%. Since the AKBTPL has already furnished the proposed rates applying the applicable escalation factor of 22.52% and the KPT has not made any adverse comments on this, this Authority is inclined to replace and incorporate the proposed rates in the upfront tariff SOR approved for KPT on 17 August 2010 and notify the SOR in the name of AKBTPL as required under clause 2.8 of the 2008 guidelines.
- (vii). For the subsequent years as well, the indexation to the extent of 60% of the WPI occurring between January 2010 and January of the relevant year has to be applied with reference to the tariff approved vide Order No.TAMP/42/2009-KPT dated 17 August 2010 and not with reference to the approved indexed Scale of Rates. The General note to Schedule (2) to (5) in the SOR approved in the Order dated 17 August 2010 is, therefore, suitably modified clarifying this position. This is in line with the prescription in the Scale of Rates of other BOT operators governed under 2008 guidelines who have commenced the operations. All the other conditionalities governing the application of the rates as approved in the Scale of Rates of the Order dated 17 August 2010 are retained.
- (viii). As per clause 3.8.5 of the 2008 guidelines, if any question arises requiring clarifications or interpretation of the Scale of Rates and the statement of conditions, the matter shall be referred to this Authority and its decision in this regard will be binding on the operator.
- (ix). The AKBTPL is expected to perform at least at the performance standards / norms brought out in the bid documents / Concession Agreement. The actual performance of the AKBTPL will be monitored by this Authority. If any complaint regarding quality of service is received, this Authority may enquire into such allegation and forward its findings to the KPT. If any action is to be taken against the AKBTPL, the KPT shall initiate appropriate action in accordance with the provisions of the Concession Agreement.
- (x). During the commercial operation at the terminal, within 15 days from the end of every quarter, the AKBTPL is directed to submit to this Authority through the KPT a report containing the physical and financial performance at Dry Bulk Terminal during the preceding three months.

6.1. In the result, and for the reasons given above and based on the collective application of mind, this Authority approves the Scale of Rates for operation of Dry bulk terminal off Tekra near Tuna operatable by the AKBTPL at KPT attached as **Annex**.

6.2. The Scale of Rates notified for AKBTPL will come into force from the date of commencement of commercial operations by AKBTPL at KPT.

(T.S. Balasubramanian)
Member (Finance)

ADANI KANDLA BULK TERMINAL PVT LTD

TARIFF SCHEDULE OF DRY BULK TERMINAL OFF TEKRA NEAR TUNA

1.1. 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 competent authority.
- (ii). **“Foreign Vessel”** means any vessel other than a coastal vessel.
- (iii). **“Per day”** means per calendar day unless other wise stated.

1.2. GENERAL TERMS AND CONDITIONS

- (i). The status of the vessel, as borne out by its certification by the Customs or the Director General of Shipping, is the relevant factor to decide whether vessel is ‘coastal’ or ‘foreign-going’ for the purpose of levy of vessel related charges; and, the nature of cargo or its origin will not be of any relevance for this purpose.
- (ii).
 - (a). The vessel related charges for all coastal vessels should not exceed 60% of the corresponding charges for other vessels.
 - (b). the cargo related charges for all coastal cargo other than thermal coal should not exceed 60% of the normal cargo related charges.
 - (c). 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.
 - (d). 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.
- (iii). 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 rate of penal interest will be 2% above the Prime Lending Rate of the State Bank of India.
 - (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.

- (iv). All charges worked out shall be rounded off to the next higher rupee on the grand total of the bill.
- (v). Users will not be required to pay charges for delays beyond reasonable level attributable to the terminal operator.

2. BERTH HIRE CHARGES:

The berth hire charge payable by masters / owners / agents of the vessel and other floating craft approaching or lying alongside the berth shall be as per the rates given below:

Vessels	Rate per GRT per hour or part thereof	
	Foreign Going Vessel (in ₹)	Coastal Vessel (in ₹)
All vessels	0.60	0.36

Notes:

- (i). The period of berth hire shall be calculated from the time vessel occupies the berth.
- (ii). Berth hire includes charges for services rendered at the berth, such as occupation of berth, rubbish removal, cleaning of berths, fire watch, etc.
- (iii). No berth hire shall be levied for the period when the vessel idles at its berth for continuous one hour or more due to breakdown of terminal operator's equipment or power or for any other reasons attributable to the terminal operator.
- (iv).
 - (a). Berth hire shall stop 4 hours after the time of vessel signaling its readiness to sail.
 - (b). The time limit of 4 hours prescribed for the cessation of berth hire shall exclude the ship's waiting time for want of favorable tide conditions, inclement weather, and due to lack of night navigation.
 - (c). The master / agent of the vessel shall signal readiness to sail only in accordance with favorable tidal and weather conditions.
- (v). The Penal Berth hire shall be equal to one-day's (24 hours) berth hire charge for a false signal.

"False signal" would be when the vessel signals readiness and asks for a pilot in anticipation even when she is not ready for un-berthing due to engine not being ready or cargo operation not completed or such other reasons attributable to the vessels. This excludes the signaling readiness when a vessel is not able to sail due to unfavorable tide, lack of night navigation or adverse weather conditions."

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:

Sl. No.	Commodity	Rate in Rupees (Per Tonne)	
		Foreign	Coastal
i	Foodgrains	190.24	114.14
ii	Salt	190.24	114.14
iii	Fertilizer	190.24	114.14

iv	Fertilizer raw materials	190.24	114.14
v	Coal	190.24	114.14

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.

4. STORAGE CHARGES:

The storage charges for the cargo stored in the stackyard beyond the free period allowed shall be as below:

(A). For Import & Export

Commodity	(Rate in ₹ per MT per day)		
	Rate for 1 st day to 10 th day	Rate for 11 th day to 20 th day	Rate for 21 st onwards
All types of cargo	2.54	5.07	7.61

Note for Section 4

- (i). Five free days for import cargo and fifteen free days for export cargo shall be allowed. For the purpose of calculation of free period, Customs notified holidays and Terminal's non- working days shall be excluded.
- (ii). Storage charges shall be payable for all days including Terminal's non- working days and Customs notified holidays for stay of cargo beyond the prescribed free days.
- (iii). Storage charge on cargo shall not accrue for the period when the terminal operator is not in a position to deliver / ship the cargo when requested by the user due to reasons attributable to the terminal operator.

5. MISCELLANEOUS CHARGES

Sl. No.	Commodity	Rate in Rupees (per tonne)
(a).	All types of cargo	10.14

The miscellaneous charges prescribed above is a composite charge for provision of all miscellaneous services such as sweeping of cargo on the wharf, weighment of cargo, dust suppression etc.

6. GENERAL NOTE TO SECTION 2 TO 5 ABOVE

The tariff caps prescribed in the Scale of Rates of Adani Kandla Bulk Terminal Pvt. Ltd. takes into consideration the upfront tariff approved by the Authority vide Order No.TAMP/42/2009-KPT dated 17 August 2010 and applying indexation to the extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2010 and 1 January of the relevant year. For the subsequent years as well, upfront tariff approved in the Order No.TAMP/42/2009-KPT dated 17 August 2010 will be indexed to inflation but only to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2010 and 1 January of the relevant year. Such automatic adjustment of tariff caps will be made every year and the adjusted tariff caps will come into force from 1 April of the relevant year to 31 March of the following year.
