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Tariff Authority for Major Ports

G No. 26

New Delhi, 4 February 2013

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 Vizag General Cargo Berth Private Limited for notification of Scale of Rates approved vide Order No.TAMP/58/2008-VPT dated 27 November 2009 notified on 18 December 2009 vide Gazette No.250 pertaining to mechanized handling of coking and steam coal at the General Cargo Berth on DBFOT basis at Visakhapatnam Port in pursuance of the guidelines for upfront tariff setting for Public Private Participation (PPP) projects at Major Ports vide this Authority's Notification No.TAMP/52/2007-Misc. dated 26 February 2008 as in the Order appended hereto.

(Rani Jadhav)
Chairperson

Tariff Authority for Major Ports
Case No. TAMP/58/2008-VPT

Vizag General Cargo Berth Private Limited - - - - -

Applicant

QUORUM:

- (i). Smt. Rani Jadhav, Chairperson
- (ii). Shri. T.S. Balasubramanian, Member (Finance)

O R D E R

(Passed on this 11th day of January 2013)

This Authority had passed an Order dated 27 November 2009 fixing upfront tariff based on the proposal filed by the Visakhapatnam Port Trust (VPT) for fixation of upfront tariff for the mechanized handling of coking and steam coal at its General Cargo Berth (GCB) on DBFOT basis and the said order was notified in the Gazette of India on 18 December 2009 vide Gazette No.250.

2.1. In this connection, we have received a letter dated 3 November 2012 from Vizag General Cargo Berth Private Limited (VGCBPL) and the main points made by VGCBPL in its letter are summarized below:

- (i). We are the concessionaire of the project for Mechanical handling of coking coal and steam coal at General Cargo Berth of Visakhapatnam Port awarded on Design, Build, Finance, Operate and Transfer basis. The Concession Agreement with VPT has been signed on 10 June 2010.
- (ii). The project is under final stage of testing and the commercial operation of the project is expected in the last week of November, 2012.
- (iii). The upfront tariff for this project has been fixed by this Authority's order dated 27 November 2009. As per the said order and the indexation of tariff as required under clause 2.8 of the tariff guidelines of 2008 at 13.71% applicable for the financial year 2012-13 as intimated by the Authority, following is the summary of ceiling rate applicable for the project:

Sl. No.	Particulars	Units	Scale of Rates as per TAMP Order dated 27/11/2009 (₹)	Scale of Rates after considering the escalation factor 13.71% for FY 2012-13 (₹)
1.	Berth Hire charges	₹ / GRT per hour	0.654	0.744
2.	Cargo Handling charges	₹ / MT	131.94	150.03
3.	Storage charges (0-5 days after 10 days free storage)	₹ / MT of balance cargo	1.58	1.80
4.	Storage charges (6-10 days after 10 days free storage)	₹ / MT of balance cargo	3.16	3.59
5.	Storage charges (11 th day onward)	₹ / MT of balance cargo	6.32	7.19
6.	Misc. charges (charges for sweeping, dust suppression and environment, etc.)	₹ / MT	1.35	1.54

2.2. Enclosing a copy of the Scale of Rates of 27 November 2009 Order, the VGCBPL has requested this Authority to notify the Scale of Rates as required under clauses 2.9.1 & 2.9.2 of Tariff guidelines of 2008.

3. The VPT has awarded the project of Mechanization of the Coal Handling facilities and upgradation of GCB at Outer Harbour of VPT to M/s. Vizag General Cargo Berth Private Limited (VGCBPL). The Concession Agreement with VPT has been signed on 10 June 2010 and the agreement is valid for a period of 30 years from the date of signing of the agreement. 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 notification set out in Appendix -12. The Appendix – 12 is the Scale of Rates notified by this Authority under cover of the tariff Order dated 27 November 2009 fixing upfront tariff for the mechanized handling of coking and steam coal at the GCB on DBFOT basis.

4. A copy of VGCBPL's letter dated 3 November 2012 was forwarded vide our letter dated 8 November 2012 to the VPT, Licensor, inviting its comments. After reminders, the VPT vide its letter dated 21 December 2012 has responded. The submissions made by VPT are summarized below:

- (i). As per the reports submitted by M/s.VGCBPL, the Concessionaire for the subject project, the status of the project completion is 96.55% as on 13.12.2012. As per concession agreement clause no. 6.7(d), the commercial operations at the berth shall commence on receipt of the provisional certificate from the Independent Engineer M/s.Tata Projects Ltd. As on date, no such certificate is issued by the Independent Engineer. However, the Independent Engineer has issued a certificate recommending the vessels of capacity upto 80,000 DWT to be allowed to be berthed at the newly constructed GCB for load trials of ship unloaders as per the Concessionaire's request.
- (ii). The Concessionaire also informed that as on date no provisional certificate has been issued and the date of commencement of operations is expected around December 2012/ January 2013.

5. In continuation of its proposal dated 3 November 2012, the VGCBPL vide its letter dated 31 December 2012 has stated that the company has successfully completed the trial of its project equipments and is in the process of obtaining commencement of operations certificate very shortly for starting its commercial operations. The date of commencement of commercial operation is expected in mid January 2013. Therefore, it has requested this Authority to notify the Scale of Rates for the project of the company following the provisions of the 2008 upfront tariff guidelines.

6.1. Clause 2.9.1. of the Tariff Guidelines of 2008 for fixation of upfront tariff stipulates that before commencement of commercial operations, the private operator shall approach this Authority for notification of Scale of Rates containing ceiling rates applicable to his operations, as required under Section 48 of the Major Port Trusts Act, 1963. Clause 2.9.2. of the Tariff Guidelines of 2008 for fixation of upfront tariff stipulates that the Scale of Rates to be framed by TAMP as per Clause 2.9.1. 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. These provisions have also been made in the upfront tariff Order of November 2009.

6.2. As per clause 2.8 of guidelines for upfront tariff setting for PPP Projects at Major Ports, 2008, the Tariff Caps will be indexed to inflation but only to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2008 and 1 January of the relevant year, and the adjusted tariff will come into force from 1 April of the relevant year to 31 March of the following year.

6.3. The base year for the upfront tariff and the corresponding annual escalation with effect from 1 April 2012 were already communicated to all the Major Port Trusts including VPT vide our letter No.TAMP/12/2009-Misc. dated 18 April 2012 as given below:

Tariff with base WPI as on	Escalation factor to be applied
1 January 2011	5.89%
1 January 2010	12.18%

1 January 2009	13.71%
1 January 2008	20.11%

6.4. As per Paragraph 6 of the Tariff Order dated 27 November 2009 issued fixing upfront tariff for the facility in reference, it has been stipulated that tariff caps will be indexed to inflation to an extent of 60% of the variation in the WPI occurring between 1 January 2009 and 1 January of the relevant year. Accordingly, the escalation factor to be applied in the case in reference is 13.71% as per our letter dated 18 April 2012 read with paragraph 6 of the Tariff Order dated 27 November 2009.

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

- (i). This Authority has passed an Order dated 27 November 2009 fixing upfront tariff based on the proposal filed by the Visakhapatnam Port Trust (VPT) for fixation of upfront tariff for the mechanized handling of coking and steam coal at its General Cargo Berth (GCB) on DBFOT basis. The VPT has awarded the project of Mechanization of the Coal Handling facilities and upgradation of GCB at Outer Harbour of VPT to M/s. Vizag General Cargo Berth Private Limited (VGCBL) and entered into a Concession Agreement on 10 June 2010 for a period of 30 years.
- (ii). As brought out earlier, 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 his operations before commencement of commercial operations. Accordingly, the VGCBL has approached this Authority with a request to notify the Scale of Rates as required under the Tariff Guidelines of 2008.
- (iii). As reported by the VGCBL, it has completed the trial of its project equipments and is in the process of obtaining certificate for commencement of operations very shortly for starting its commercial operations. It is understood that the Independent Engineer of the project has issued Provisional Certificate declaring that the project is fit for commencing commercial operation. The operator expects that the commercial operations will commence in mid January 2013. Relying on the position reported by VGCBL, this Authority is inclined to entertain the proposal of VGCBL for notification of the Scale of Rates approved in November 2009 subject to adjustment with reference to the indexation of the rates so approved to WPI to the extent of 60%.
- (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. The Appendix – 12 to the Concession Agreement entered by VGCBL with VPT is seen to be the Scale of Rates notified by this Authority under cover of the tariff Order dated 27 November 2010 fixing upfront tariff for the mechanized handling of coking and steam coal at the GCB on DBFOT basis.
- (v). With reference to the indexation of the upfront tariff fixed in November 2009 as required under Clause 2.8. of the 2008 Guidelines, an escalation factor of 13.71% is to be applied on the tariff caps notified in November 2009. Applying the escalation factor of 13.71% on the tariff caps notified in November 2009, the Scale of Rates implementable by the VGCBL is drawn up along with the conditionalities governing the application of rates as prescribed in the tariff Order of November 2009. It is to be noted here that only the rates of tariff items notified vide Order of November 2009 have been subjected to change in view of the application of applicable escalation factor and the conditionalities governing the application of the rates as contained in Order of November 2009 remain without any change.

- (vi). As stipulated in para 12.3 of the Tariff Order of November 2009, as per Clause 3.8.5. of the 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.
- (vii). The VGCBPL is expected to perform at least at the performance norms brought out in the bid documents / concession agreement. The actual performance of the VGCBPL will be monitored by this Authority. If any complaint regarding quality of service is received, this Authority will enquire into such allegation and forward its findings to the Visakhapatnam Port Trust. If any action is to be taken against the VGCBPL, the Visakhapatnam Port Trust shall initiate appropriate action in accordance with the provisions of the Concession Agreement.
- (viii). During the commercial operation at the terminal, within 15 days from the end of every quarter, the VGCBPL shall submit to this Authority through the Visakhapatnam Port Trust a report containing the berth's physical and financial performance during the preceding three months.

7.2. 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 the mechanized handling of coking and steam coal at General Cargo Berth (GCB) to be operated by the VGCBPL at VPT attached as **Annex**.

7.3. The Scale of Rates notified for VGCBPL will come into force from the date of commencement of commercial operations by VGCBPL at VPT.

(Rani Jadhav)
Chairperson

VIZAG GENERAL CARGO BERTH PRIVATE LIMITED

SCALE OF RATES

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 licence issued by the competent authority.
- (ii). **"Foreign going vessel"** means any vessel other than a Coastal vessel.
- (iii). **"Day"** shall mean the period starting from 6.00 A.M. of a day and ending at 6.00 A.M. on the next day.

1.2. GENERAL TERMS & CONDITIONS

- (i). The status of the vessel, as borne out by its certification by the customs or 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 berth hire 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 concession charges relevant for its coastal voyage. In other words, cargo from/to Indian Ports carried by vessels 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 of 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 on refunds will be counted only 20 days from the day 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 the scale of rates.

- (iv). In calculating the gross weight or measurement by volume or capacity of any individual item, fractions upto and inclusive 0.5 shall be taken as 0.5 unit and fractions of above 0.5 shall be treated as one unit, except where otherwise specified.
- (v). All charges worked out shall be rounded off to the next higher rupee on the grand total of the bill.
- (vi).
 - (a). The rates prescribed in the Scale of Rates are ceiling levels: likewise, rebates and discounts are floor levels. The terminal operator may, if they so desire, charge lower rates and / or allow higher rebates and discounts.
 - (b). The terminal operator may also, if they so desire rationalise the prescribed conditionalities governing the application of rates prescribed in the Scale of Rates if such rationalisation 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 notify the public such lower rates and / or rationalisation of the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rates notified by the TAMP.
- (vii). Users will not be required to pay charges for delays beyond reasonable level attributable to terminal operator.

2. BERTH HIRE CHARGES:

Sl. No.	Vessels	Rate per GRT per hour or part thereof	
		Foreign Going Vessel (in Re.)	Coastal Vessel (in Re.)
1.	Vessels	0.744	0.446

Notes:

- (i). The period of berth hire shall be calculated from the time vessel occupied the berth till she vacates 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 as its berth for continuous one hour or more due to non-availability / break down of terminal operator's equipment or power failure or any reasons attributable to the terminal operator.
- (iv).
 - (a). Berth hire shall stop four hours after the time of the vessel signaling its readiness to sail.
 - (b). The time limit of 4 hours prescribed for the cessation of the 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 favourable tidal and weather conditions.
- (v). The Penal berth hire shall be equal to one-day's (24 hours) berth hire charges 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 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:

Sl. No.	Commodity	Unit	Rate in Rupees	
			Foreign	Coastal
(a).	Coking coal	Per Metric Tonne	150.03	90.01
(b).	Steam coal	Per Metric Tonne	150.03	90.01

Note:

The handling charges prescribed above is a composite charge for unloading of the cargo from the vessel and transfer of the same up to the point of storage, storage at the stackyard up to a free period of 10 days reclaiming from stackyard and loading on to railway wagons including wharfage and supply of labour whenever necessary and all other miscellaneous charges not specifically prescribed in the Scale of Rates.

4. STORAGE CHARGES:

The Storage charges for the cargo stored in the stack yard beyond the free period shall be as below:

(Rate in ₹. per tonne per day or part thereof)

Sl. No.	Commodity	Rate for first 5 days for the balance cargo remaining after the free period	Rate for 6 th day to 10 th day for the balance cargo	Rate for 11 th onwards for the balance cargo
1.	Coking coal and Steam coal	1.80	3.59	7.19

Notes:

- (i). 10 free days shall be allowed. Free period shall commence from the day following the day of complete discharge of vessel cargo. For the purpose of calculation of free period, Custom 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 charges 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:

The following Miscellaneous charges are applicable of coking coal and steam coal handled:

Sl. No.	Particulars	Rate per tonne or part thereof (in ₹.)
(i).	Charges for Sweeping, dust suppression and environment etc.	1.54

6. GENERAL NOTE TO SCHEDULE (2) TO (5) ABOVE:

The tariff caps will be indexed to inflation but only to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2009 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 31st March of the following year.
