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Tariff Authority for Major Ports

G.No. 146 **New Delhi** **25 April 2016**

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 Visakhapatnam Port Trust (VPT) for fixation of charges for Radiological equipment facility installed at EQ-7 gate as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports

Case No. TAMP/54/2015-VPT

Visakhapatnam Port Trust - - - - - **Applicant**

QUORUM:

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

O R D E R

(Passed on this 30th day of March 2016)

This case relates to the proposal dated 4 July 2015 received from the Visakhapatnam Port Trust (VPT) for fixation of charges for Radiological equipment facility installed at EQ-7 gate.

2.1. The highlights of the proposal submitted by VPT are summarized below:

(i). The Visakhapatnam Port has installed mechanical facility (equipment) for carrying out radiological detection at EQ-7 gate inside Dock area premises, wherein the vehicles plying in and out of Dock area through entry/ exit point at the above said location will be scrutinized for presence of radiological element, if any, which is hazardous in nature. The said facility was installed and commissioned at VPT on 10 February 2015.

(ii). VPT, in consultation with trade, has come to conclusion that specific charge for such facilities needs to be approved and notified by Authority so as to inform the Trade regarding such specific charge and also to levy the same on the Port users for this facility as and when their vehicles ply in and out of Dock area premises through EQ-7 gate.

(iii). To levy charge for such service as and when availed by the trade concerned, VPT has tentatively fixed the tariff to be levied for such services at ₹63/- provisionally for one entry and exit of each vehicle passing through the said location so as to undergo radiological detection through installed equipment as described above.

2.2. The port has submitted a copy of the minutes of the meeting held with trade on 6th April 2015. The main points recorded in the minutes of the meeting are summarised below:

(i). Trade requested VPT not to charge any fee on this account since VPT is not rendering any service to the users and that the unit was set up due to mandatory requirement of VPT for security reasons as per the Ministry's Guidelines. Trade stated that the cost has to be borne by VPT only and further mentioned that the Trade was not consulted before procurement and installation of the equipment.

(ii). The Trade representatives also stated that the cost of one unit is about ₹2.5 crores and VPT may require 2-3 units in future and this cost cannot be borne by the Trade.

(iii). Trade has requested VPT to withdraw the proposal and refer the matter to the TAMP. The trade unanimously agreed to pay the charges if approved and fixed by the TAMP in respect of the user fee for installation of Radiological Detection Equipment.

2.3. A Cost Sheet submitted by the port showing the rate to be charged for the vehicles passing through EQ-7 gate operated with radiological equipment is given below:

Sl. No.	Description	Amount in ₹

I.	Capital cost of 2 Radiological Detection Equipment	26164310
II.	**VARIABLE COST** Power Cost (4050 Watts per hour/1000=4.05 KWHrs 4.05 KWH i.e. per hour units consumed x 24 hrs x 365 days x R) S. T of Salaries and wages of operating and maintenance staff and MGA- **TOTAL VARIABLE COST**	 336686 2338122 1308216 **3983024**
III.	**FIXED COST** Depreciation considered as per TAMP notification in G.No.30 of 100 Ton Wagon Weigh Bridge @ 13.91% Return on Capital Employed @ 16% on Capital Cost (19536924*16%) **TOTAL FIXED COST** **TOTAL COST (II + III)** No. of vehicles expected to pass through EQ-7 gate	 3639456 3125908 **6765363** **10748387** 170644
	Charges per vehicle (For one entry and one exit)	**63**

2.4. In this backdrop, the port has requested this Authority to approve and notify the rate as per costing worked out for providing such services at VPT w.e.f.10 February 2015.

3. In accordance with the consultative procedure prescribed, a copy of the proposal of VPT dated 4 July 2015 was forwarded to the concerned users/ user organisations seeking their comments. We have received comments only from Hindustan Petroleum Corporation Limited (HPCL) and Visakha Container Terminal Pvt. Ltd. (VCTPL). The VCTPL has no objection to the proposal of VPT. We have not received comments from the VPT on the comments HPCL.

4 On preliminary scrutiny of the proposal dated 04 July 2015, the VPT was requested vide our letter dated 14 October 2015 to furnish information/ clarifications on a few points. The VPT has, however, not responded. The information / clarifications sought vide our letter dated 14 October 2015 are as follows:

I. <u>General:</u>

(i). The proposal of the VPT does not state that it is filed under Tariff Policy, 2015 which is effective from 13 January 2015. Please confirm.

(ii). Clause 5.7.1. of the revised Working Guidelines notified by the Authority in compliance with Clause 1.5. of the Tariff Policy 2015, stipulates the various methods for fixation of tariff for a new service / cargo for which tariff is not available in the SOR. As per the said Clause, if the determination of tariff based on prescribed options is not possible then the Major Port Trust after giving sufficient reasons may propose rate on cost plus 16% return formula. The VPT to clarify whether the port has explored the options mentioned in the said Clause before filing up the proposal on cost plus method.

(iii). Though the covering letter of the VPT dated 4 July 2015 states that the port has, in consultation with the trade, come to the conclusion for levy of specific charges for vehicle plying in and out of dock area through EQ-7 gate, the copy of the minutes of the meeting dated 6 April 2014 by the VPT with the trade records that the trade has viewed that port should bear the cost of rendering this service and hence has requested the port to withdraw the proposal and refer to TAMP. The VPT to comment upon the objection raised by the trade on the subject proposal recorded in the said minutes of the meeting.

(iv). Furnish a copy of the Board approval approving the proposed rate.

II. <u>Capital Cost</u>:

(i). The capital cost of the equipment is ₹26,164,310/-. However, for computation of ROCE, the net block of asset is considered at ₹19,536,924. The average written down value of the asset for three years being the validity of the tariff to be approved as per the Tariff Policy, 2015, after considering the depreciation of ₹36,39,456 per annum comes to ₹18,88,85,398 instead of ₹19,536,924 considered for ROCE computation. The VPT to suitably correct the ROCE computation.

(ii). The total capital cost includes Excise duty of ₹ 23,72,378/- and Service Tax of ₹1,99,635/-. In this regard, to confirm that the cenvat credit with respect to Excise duty and Service Tax is not availed. Confirm the asset is capitalised for ₹26,164,310. If cenvat credit is available, the cost statement may be suitably modified excluding the cenvat credit.

III. Operating Cost:

(i). Furnish the basis of power consumption at 4.05 units per hour. Also, furnish a copy of latest electricity bill in support of unit rate of power considered in the estimation.

(ii) (a). The VPT has estimated ₹23.38 lakhs as "S.T". VPT to clarify the nature of this expenditure and basis for the estimates.

(b). As per the Chief Mechanical Engineer letter dated 2 February 2015 attached to the proposal proposing about the work order issued for installation of Radiological Equipment (R.E.), it is seen that some tentative estimates are furnished for AMC for first 5 years (after the first year) and for 10 years. The VPT requested to confirm whether cost estimates for arriving at the proposed tariff considers the estimates of AMC. Copy of the work order please be furnished in support of the estimates.

(iii). (a). Furnish the working for the salary & wages of operating and maintenance staff considered in the cost statement.

(b). The cost statement shows MGA is also considered as part of salaries and wages. The basis of apportionment of MGA to this activity to be justified. Since MGA was already considered in general revision proposal, the VPT to confirm that it will not lead to duplication if considered in the current proposal.

(iv). (a). The port has referred to the depreciation rate of 13.91% considered for wagon weigh bridge in one another case. Clarify the relevance of referring to wagon weigh bridge for the purpose of depreciation rate for radiological equipment.

(b). Confirm the depreciation rate considered is as per the Companies Act 2013. Also, give reference to the relevant depreciation rate taken from the Companies Act 2013 substantiated with the extract of the relevant page of the Companies Act, 2013.

5. A joint hearing in this case was held on 16 October 2015 at the VPT premises. The VPT made a power point presentation of its proposal. At the joint hearing, the VPT and users / user association have made their submissions.

6.1. As agreed at the joint hearing, the VPT was requested vide our letter dated 26 October 2015 to take action on the following points arising out of joint hearing proceedings:

(i). Furnish a copy of power point presentation made at the joint hearing.

(ii). At the joint hearing, the users/ users associations requested to merge the proposed tariff with any other relevant tariff item while sending proposal for general revision of Scale of Rates, which is due. The VPT to examine the suggestion of the users / user associations and respond within 15 days i.e. by 31 October 2015.

6.2. The users/ user associations present at the joint hearing stated that they have not received the proposal filed by the VPT for fixation of levy charges for Radiological Equipment Facility installed at EQ-7 gate. Our office records show that the said proposal was forwarded to all concerned for comments vide our letter dated 17 July 2015. However, as decided at the joint hearing a copy of the VPT proposal dated 4 July 2015 was once again circulated to the users / organisation bodies who were present at the joint hearing vide our letter dated 26 October 2015 seeking their comments latest by 30 October 2015 to VPT as well as this Authority. The VPT was also requested to furnish its response within seven days thereafter vide our letter dated 26 October 2015.

7. After the joint hearing, the Visakhapatnam Stevedores Association (VSA) has furnished its comments vide its letter dated 18 November 2015 on the subject proposal. None of the other users/ user association have furnished any comments despite forwarding the VPT proposal once again vide our letter dated 26 October 2015. The comments of VSA was forwarded to VPT as feedback information requesting the VPT to furnish its views on the comments made by VSA immediately.

8.1. As regards the first point of action, the VPT vide its letter dated 5 November 2015 has furnished the copy of power point presentation made at the joint hearing.

8.2. The VPT has not responded to the second point of action flowing from the joint hearing proceedings despite reminders dated 6 November 2015 and 3 December 2015. The VPT has, however, referring to the second point of action of the joint hearing, proposed a rate in its general revision proposal filed on 30 December 2015 which is brought out in the subsequent paragraphs.

9. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and arguments made by the concerned parties will be sent separately to the relevant parties. These details will also be made available at our website http://tariffauthority.gov.in.

10.1 As brought out earlier, VPT was requested to examine the suggestion of users/ user association to merge this tariff item in its proposal for general revision of SOR, which is already due. Though the VPT has not responded on this specific point of action in the current proposal, it is relevant to state that the VPT vide its letter No.FA/COST/SOR/211 dated 30 December, 2015 has filed its proposal for general revision of its Sale of Rates (SOR). In the said proposal, the port has stated that as per the request made by the users/users association in the joint hearing held on 16 October 2015 to merge the proposed tariff for radiological equipment facility with any other relevant tariff item while sending proposal for general revision of SOR and with the request of this Authority to examine the suggestion of the users / user association, the Port has filed its General Revision proposal under Tariff Policy 2015. It has therein proposed to collect 0.38 paisa per ton on dry bulk and break bulk cargoes for a period of 10 years towards installation of radiological equipment in addition to the wharfage rate prescribed in schedule 4.1. The port has furnished detailed working in support of the proposed rate. It is seen from the draft proposed SOR filed by the VPT that the port has inserted a note under Schedule 4.1.- Wharfage charges to this effect.

10.2. Since the VPT has already proposed tariff for radiological equipment in the general revision proposal, this Authority finds it appropriate to deal with this tariff item along with the general revision proposal.

11. In the result, and for the reasons given above, and based on a collective application of mind, this Authority decides to close the proposal dated 4 July 2015 filed by VPT for fixation of levy charges for Radiological equipment facility installed at EQ-7 gate as infructuous. The tariff determination for radiological equipment will be considered along with the general revision proposal filed by the VPT which is being processed separately.

(T.S. Balasubramanian)
Member (Finance)

SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS / DIFFERENT USER ORGANISATIONS AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY.

TAMP/54/2015-VPT	:	**Proposal received from Visakhapatnam Port Trust (VPT) for fixation of charges for Radiological equipment facility installed at EQ-7 gate**.

1. A summary of comments received from the users / user organisations is given below:

Sl. No.	Comments received from users/ user organisations
1.	**Hindustan Petroleum Corporation Limited (HPCL)**
(i).	Our facilities for berthing vessels are located at Oil Wharf OR-I & OR-II and all our Oil tankers handled at OR-I & OR-II which will not be passed through the EQ-7 gate.
(ii).	In view of above, it may be noted that levy charges for Radiological equipment facility installed at EQ-7 are not applicable to HPCL and, therefore, we do not have any comments to offer on the subject.
2.	**Visakha Container Terminal Pvt. Ltd. (VCTPL)**
	VCTPL has no objection in levy of charges for the Radiological equipment facility installed at EQ-7 gate by VPT.

2. A joint hearing in this case was held on 16 October 2015 at the VPT premises. At the joint hearing, the VPT and users / user association have made the following submissions:

Visakha Container Terminal Private Limited (VCTPL)

(i). As per the Ministry's direction in the year 2012, the Board has approved to install Radiological Equipment facility at EQ-7 to detect illegal entry of Radio Active Material and its contamination to other products.

(ii). The said facility was already installed and commissioned on 10 February 2015. The total cost including Annual Maintenance cost for 10 years is coming to ₹5.22 crores. The following equipment was installed / proposed to be installed. Ministry of Shipping has given the price schedule. VPT has just placed orders on the Electronic Corporation Limited.

Description of the Equipment	Qty.	To be installed at	Status
Vehicle Monitoring System	2	EQ-7 gate	Installed & Commissioned
Limb Monitor	1	Jubilee gate	Under installation
Portal Monitoring System	1	Jubilee gate	Under installation
Portable Survey Meters	2	EQ-7 gate	Installed & Commissioned
Radiation Monitor	1	EQ-7 gate	Installed & Commissioned
Isotope Identified	1	EQ-7 gate	Installed & Commissioned
Networking Charges	Lot	EQ-7 gate	Installed & Commissioned
AMC	For first 5 years after one year guarantee period		
AMC	For 5 years (after 6 years from installation)		

(iii). We have discussed the proposal for levy of tariff for Radiological Equipment facility at EQ-7 gate with the Trade.

(iv). As directed by the Chairman to collect user charges for Radiological Equipment facility at EQ-7 gate, it was decided to recover the cost of the said facility by way of levying ₹63/- (arrived provisionally) for one entry and exit of each vehicle passing through EQ-7 gate. VPT is not charging now due to the objection of users.

Visakhapatnam Stevedores' Association

(i). We have not received the subject proposal filed by VPT.

(ii). VPT is not rendering any service or providing any facility and the Radiological Equipment facility was set up due to mandatory requirement of VPT for security reasons as per the Ministry Guidelines. Hence, VPT is not to charge any levy.

(iii). The VPT has installed the Radiological Equipment facility at EQ-7 gate only and why VPT has not proposed to install at other gates. How the wagons will be screened and how the cost will be recovered from the customer who are using multipurpose gates.

(iv). What was the total transaction cost and one gate itself its coming to ₹63/- per vehicle. What about other gates. How can we compete with the other ports?

(v). We are agreeing for the tariff but the VPT may not recover the expenditure directly and port may include in any existing relevant tariff item in the general revision of scale of rates which is due instead of proposing to collect as a separate levy.

Seaport Logistics representing Visakhapatnam Customs House Agents' Association

(i). We have not received the proposal filed by the VPT for fixation of levy charges for Radiological Equipment Facility installed at EQ-7 gate.

(ii). We have to pass on the tariff proposed by the VPT to customers, who are going to pay the cost i.e., handling agents, cargo receiver, vessel agents or terminal operators.

(iii). Excise duty was included as a cost in the capital cost which is cenvatable item.

Orissa Stevedores Private Limited

(i). We have not received, the proposal filed by the VPT for fixation of levy charges for Radiological Equipment Facility installed at EQ-7 gate.

(ii). Levy is necessary, but VPT may recover the expenditure duly including in any existing relevant tariff.

(iii). What was the methodology to collect ₹63/- per vehicle which comes to ₹4/- per tonne.

(iv). With respect to recovery of separate levy, what happened to other Entry Points including BOT terminals.

3. The summary of the comments made by Visakhapatnam Stevedores Association at the joint hearing is given below:

Sl. No.	Comments made by Visakhapatnam Stevedores Association
(i).	VPT has installed the equipment as a mandatory requirement for security reasons and the same is not a service or facility for the users. Hence it is not justified to collect levy charges from the users. It is a capital investment of VPT which may be recovered from other overheads.
(ii).	Since SOR is due for revision and renewal, VPT may please be advised to recover the expenditure if any through increase in tariffs.
(iii).	The purpose of installation of this equipment is to scrutinize the presence of radiological elements if any carrying in trucks. However, VPT proposed this unit only at E.Q.7 gate. There are other entry points and exit points where such facility is not available. The users passing though the E.Q.7 gate only will be charged extra charges and vehicles going through the other entry points may not be charged any user charges. Further users may prefer to go through other entry gates to avoid extra charge at E.Q.7 entry.

	Hence, the purpose of installation of equipment is not serving and it may lead to congestion of vehicles at other entry gates.
(iv).	VPT has not proposed any such scrutinizing equipment for rakes coming into VPT and going from VPT.
(v).	The Proposed rate of ₹63 for one entry and exist of vehicles works out to about ₹4.20 per MT, which is very high and the exporters and importers are not in a position presently to bear such extra higher cost.

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