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TARIFF AUTHORITY FOR MAJOR PORTS

G.No.31

New Delhi

27 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 Adani Vizag Coal Terminal Pvt. Ltd. for notification of its Scale of Rates for its Berth East-Quay-1 at Visakhapatnam Port Trust as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

TARIFF AUTHORITY FOR MAJOR PORTS
Case No. TAMP/36/2014-VPT

Adani Vizag Coal Terminal Pvt. Ltd.

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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 dated 30 July 2014 received from Adani Vizag Coal Terminal Pvt. Ltd. (AVCTPL) regarding notification of Scale of Rates for its berth East Quay-1 at Visakhapatnam Port Trust (VPT).

2.1. This Authority had passed an Order No.TAMP/54/2009-VPT on 4 May 2010 on the proposal filed by VPT for fixation of upfront tariff for mechanised terminal for handling steam coal at East Quay 1 on Design, Built, Finance, Operate, and Transfer (DBFOT) basis which was notified in the Gazette of India Extraordinary (Part III Section 4) on 22 June 2010 vide Gazette No.143.

2.2. As per Clause 2.9.1 of the Tariff Guidelines of 2008 for fixation of upfront tariff, the private operator shall approach this Authority for notification of Scale of Rates containing ceiling rates applicable to its operations before commencement of commercial operations as required under Section 48 of MPT Act and as per Clause 2.9.2. of tariff guidelines of 2008, the Scale of Rates to be framed by the 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.

3. The AVCTPL had earlier sent a proposal dated 10 July 2014 regarding notification of Scale of Rates for its berth East Quay-1 at Visakhapatnam Port Trust (VPT). However, AVCTPL had not applied the correct escalation factor of 22.52% applicable in its case for the base year 1 January 2010 while arriving at the proposed rates. The AVCTPL had also not furnished the draft SOR and the completion certificate from the Independent Engineer.

4. In view of above, the AVCTPL was requested by our letter dated 16 July 2014 to furnish complete draft Scale of Rates taking the Scale of Rates as approved by this Authority in Order No.TAMP/54/2009-VPT dated 4 May 2010 duly applying the applicable indexation factor announced by this Authority for the year 2014-15 and to indicate the likely date of commencement of operations at the Berth and also forward a copy of the completion certificate from the Independent Engineer as per the concession agreement entered with the VPT.

5. The AVCTPL by its letter dated 30 July 2014 has furnished proposed rates for its berth for all the tariff items applying indexation factor of 22.52% announced by this Authority for the year 2014-15 on the upfront tariff approved by this Authority vide Order dated 4 May 2010. They have also forwarded a copy of the Independent Engineers report and indicated the tentative of commencement of operations as September 2014. Instead of forwarding the draft Scale of Rates, the AVCTPL has forwarded the Appendix 12 of the Concession Agreement entered into by it with the VPT which contains the Upfront Tariff Schedule approved by this Authority vide Order dated 4 May 2010.

6.1. A copy of the AVCTPL's proposal dated 30 July 2014 was forwarded to the VPT vide our letter dated 20 August 2014 to offer its comments on the proposal of AVCTPL and also to ascertain from AVCTPL the expected date of commencement of the operations at the Berth. This was followed by reminders dated 9 October 2014 and 3 November 2014, requesting VPT to expedite furnishing its response.

6.2. The VPT by its letter dated 16 December 2014 has forwarded a copy of the completion certificate from the Independent Engineer and confirmed that the project has been declared fit to enter into commercial operations from 2 September 2014 as per the Completion Certificate issued by the Independent Engineer. The VPT has not furnished any specific comments as such on the proposal of AVCTPL. Since the exercise before this Authority is only to notify the SOR in the name of the DBFOT operator AVCTPL taking the rates already notified in the upfront tariff Order of 4 May 2010 subject to applying the applicable escalation factor, and recognizing that the VPT has confirmed the date of commencement of operation of the terminal, this Authority decides to proceed ahead with the proposal of the AVCTPL for notification of its Scale of Rates.

7.1. 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/54/2009-VPT on 4 May 2010 on the proposal filed by Visakhapatnam Port Trust (VPT) for fixation of upfront tariff for mechanised terminal for handling steam coal at East Quay 1 on Design, Built, Finance, Operate, and Transfer (DBFOT) basis which was notified in the Gazette of India Extraordinary on 22 June 2010 vide Gazette No.143.
- (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 its operations before commencement of commercial operations. Accordingly, AVCTPL has approached this Authority with a request to notify its Scale of Rates (SOR) as required under the Tariff Guidelines of 2008.
- (iii). The Independent Engineer has declared that the project is fit for entry into commercial operations from 2 September 2014. The operator AVCTPL and the landlord port VPT have also confirmed the expected date of commencement of the commercial operation by the terminal operator at berth East-Quay-1 of the Visakhapatnam Port as 2 September 2014 on the basis of the Completion Certificate issued by the Independent Engineer. In view of that this Authority is inclined to entertain the proposal of AVCTPL for notification of the Scale of Rates approved in May 2010 subject to adjustment with reference to the indexation of the rates so approved to the 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. Article 8.1 of the Concession Agreement (C.A.) entered between the VPT and AVCTPL governs levy of the tariff at Berth East-Quay-1. As per Article 8.1 of the License Agreement, the Concessionaire i.e. AVCTPL shall be entitled to recover tariff from the users of the Project Facilities and Services as per the Tariff Notification annexed as Appendix 12.
- (v). With reference to the indexation of the upfront tariff fixed vide Order dated 4 May 2010 as required under Clause 2.8. of the 2008 Guidelines, the AVCTPL has in letter dated 30 July 2014 furnished the proposed rates taking the rates as prescribed in the May 2010 tariff Order and applying the escalation factor of 22.52% as announced by this Authority on the tariff caps approved with the base year 1 January 2010. The proposed rates given by AVCTPL have been verified and found to be correct. It is, however, relevant to state that despite request, the AVCTPL has not forwarded the draft Scale of Rates taking the upfront tariff Schedule approved in the Order of 4 May 2010 and updating it with indexed rates arrived by it applying the escalation factor of 22.52%. Since the AVCTPL has already furnished the proposed rates applying the applicable escalation factor of 22.52%, this Authority is inclined to replace and incorporate the proposed rates in the upfront tariff SOR approved for VPT on 4 May 2010 and notify the SOR in the name of AVCTPL as required under clause 2.8 of the 2008 guidelines.

- (vi). 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/54/2009-VPT dated 4 May 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 4 May 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 4 May 2010 are retained.
- (vii). 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.
- (viii). The AVCTPL is expected to perform at least at the performance standards /norms brought out in the bid documents / Concession Agreement. The actual performance of the AVCTPL 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 VPT. If any action is to be taken against the AVCTPL, the VPT shall initiate appropriate action in accordance with the provisions of the Concession Agreement.
- (ix). During the commercial operation at the terminal, within 15 days from the end of every quarter, the AVCTPL is directed to submit to this Authority through the VPT a report containing the physical and Financial performance at berth East-Quay-1 during the preceding three months.

7.2. In the result, and for the reasons given above, and based on collective application of mind, this Authority approves the Scale of Rates for operation of mechanised terminal for handling of steam coal at East-Quay-1 operatable by the AVCTPL at VPT attached as **Annex**.

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

(T.S. Balasubramanian)
Member (Finance)

ADANI VIZAG COAL TERMINAL PVT. LTD.

**TARIFF SCHEDULE FOR MECHANISED HANDLING OF STEAM COAL AT
EAST QUAY 1 BERTH AT INNER HARBOUR ON DBFOT BASIS**

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 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	0.646	0.387

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 at 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).	Steam coal	Per Metric Tonne	194.78	116.87

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 5 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 of 5 days 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.	Steam coal	1.97	3.95	7.89

Notes:

- (i). 5 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.	1.98

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

The tariff caps prescribed in the Scale of Rates of Adani Vizag Coal Terminal Pvt. Ltd. takes into consideration the upfront tariff approved by the Authority vide Order No.TAMP/54/2009-VPT dated 4 May 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/54/2009-VPT dated 4 May 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.
