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Tariff Authority for Major Ports

G No.183 **New Delhi,** **17 June 2014**

NOTIFICATION

In exercise of the powers conferred by Sections 48, 49 and 50 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 for levy of penalty for non-removal of Import General Cargo / Project Cargo from the premises of Dock Area as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/9/2013-VPT

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

QUORUM:

(i). Shri. T.S. Balasubramanian, Member (Finance)
(ii). Shri. C.B. Singh, Member (Economic)

O R D E R
(Passed on this 20th day of May 2014)

This case relates to the proposal filed by the Visakhapatnam Port Trust (VPT) for levy of the penalty for non-removal of Import General Cargo / Project Cargo from the premises of Dock Area.

2.1. The VPT, vide its letter dated 31 January 2013 proposed levy of penalty for non-removal of import general and project cargo from the stacking area provided within the premises of the dock area. The main points made by the VPT in this regard are summarised below:

(i). The port users who handle import general cargo / project cargo have been advised to evacuate the said cargo from the stacking area provided within the premises of the dock area at the earliest.

(ii). Non-clearance of such cargo has resulted in congestion and affected movement of heavy vehicles plying inside the dock area. As on date the ground stock of import general cargo / project cargo is 7,350 pkgs/ 36,420 mts.

(iii). In order to mitigate the congestion, series of meetings were held with importers/ handling agents on 12 July 2012, 20 July 2012 and 1 August 2012. During the course of meeting with the handling agents, the following proposal was discussed for levy of penalty:

Sl. No.	Period	Description
01.	01 day to 10 days (7 days after issuing of circular)	Free days as per scale of rates
02.	11 days to 25 days	to collect one time charges as per SOR
03.	26 days to 40 days	05 times as per SOR
04.	41 days to 55 days (15 days)	10 times as per SOR
05.	Beyond 55 days	10 times as per SOR

(iv). Prior to levying the proposed penalty, all importers/ handling agents will be allowed one week time to clear the consignment from the dock area. Beyond the stipulated period, the proposed penalty will be levied w.e.f. 1 August 2012.

(v). Accordingly, a circular dated 25 January 2013 was issued by the port to collect the proposed penalty in the deserved cases on adhoc basis as per the provision of clauses 2.17.1. to 2.17.3 of the tariff guidelines of March 2005.

2.2. The port has, accordingly, requested to approve and notify the proposed penal charges.

3. In this regard, the following points were brought to the notice of VPT vide our letter dated 12 February 2013:

(i). As per clauses 2.17.1 to 2.17.3 of the tariff guidelines of 2005, whenever a specific tariff for a service/cargo is not available in the notified Scale of Rates, the port can submit a suitable proposal. Simultaneously with the submission of proposal, the proposed rate can be levied on an ad hoc basis till the rate is finally notified. The ad hoc rate to be operated in the interim period must be derived based on existing notified tariffs for comparable services/cargo; and, it must be mutually agreed upon by the Port/Terminal and the concerned user(s).

(ii). It is seen that the minutes of the meeting dated 1 August 2012 forwarded to office of this Authority under cover of VPT's letter dated 31 January 2013, did not contain the consent of the users for levy of penal charges proposed by the VPT for non-removal of Import General Cargo/Project Cargo from the premises of dock area. The VPT was, therefore, requested to comply with the guidelines and furnish the consent of the relevant users. It was also conveyed to VPT that in the absence of compliance of the tariff guidelines of March 2005, it may not be possible for this Authority to approve the levy of penal charges on an adhoc basis.

4.1. As the port did not furnish the consent of the users, it was again requested to furnish the same vide our letter dated 22 February 2013. The port stated that as the proposal is to levy penalty, the trade will tend to object the same and hence it may not be possible to obtain their consent.

4.2. Para 3 of the Circular No.366 of 25 January 2013 (dated 31 January 2013) forwarded by VPT states that there is no positive response for quick clearance of long pending cargo lying in dock area. Hence, as a final punitive measure, VPT has decided to levy penalty as follows after allowing a week's time to clear the consignment from the dock area from the date of issue of Circular i.e. 31 January 2013:

Sl. No.	General cargo	Project cargo	Description
1.	1st day to 5th day	1st day to 10th day	Free days as per Scale of Rates
2.	6th day to 25th day	11th day to 25th day	to collect one time charges as per SOR
3.	26th day to 40th day	26th day to 40th day	5 times as per SOR
4.	41st day to 55th day	41st day to 55th day	10 times as per SOR
5.	55th day onwards	55th day onwards	10 times as per SOR

It is also mentioned in the circular that the circular is effective from 1 August 2012.

4.3. In the above context, the schedules showing the free period and demurrage prescribed in the existing Scale of Rates of VPT at Schedule 4.6.1 and 4.6.2 respectively and as applicable for import general cargo and project cargo are reproduced as hereinunder:

4.6.1. Free storage period in the transit accommodation

	Description	***Free period***
1.	*Import Cargo* *i. Import cargo* *ii. Project cargo*	 *5 days* *10 days*
2.	*Export cargo*	*30 days*

4.6.2. Demurrage charge:

Item No.	***Description***	***Charges payable***
1.	*For the first six days after the expiry of free period*	*₹ 18.00 per tonne/Cu. meter or part thereof for every three days or part thereof.*
2.	*For the next six days*	*₹ 36.00 per tonne/Cu. Meter or part thereof for every three days or part thereof.*
3.	*Thereafter*	*₹ 18.00 per tonne/Cu. Meter or part thereof for every day or part thereof.*

4.4. It is thus seen that the VPT in their proposal dated 31 January 2013 has stated in the description that the free days as per the Scale of Rates of VPT will apply but has not bifurcated the proposed penal levy separately for general import cargo and project cargo recognising the different free period prescribed in the existing Scale of Rates for these two cargo groups. In short, in the proposal dated 31 January 2013, the period of levy of penalty is proposed after free days of 10 days commonly for both cargo categories though such bifurcation is available in the Circular dated 25 January 2013 issued to the trade which is brought out in para 4.3. above.

5.1. In the meanwhile, in accordance with the consultative procedure prescribed, a copy of the proposal dated 31 January 2013 received from the VPT was circulated to the concerned users/ user organisations for their comments. M/s.MB Power (Madhya Pradesh) Limited, GMR Chhattisgarh Energy Limited and Lanco Amarkantak Power Ltd. have furnished their comments on the proposed levy by VPT. The comments received from M/s.MB Power (Madhya Pradesh) Limited, GMR Chhattisgarh Energy Limited and Lanco Amarkantak Power Ltd. were forwarded to VPT as feedback information. The VPT has not furnished its comments on the comments of these users, despite reminders.

5.2. It is relevant here to mention that the MBPL has also furnished comments after the joint hearing reiterating its points. In fact, the comments of other two users furnished by them are also on the similar lines. Though the VPT has not furnished its comments on comments furnished by individual users, it has vide its letter dated 20 December 2013 furnished its comments on the comments of MBPL addressing the points raised by others on similar lines.

6.1. Based on a preliminary scrutiny of the proposal, the VPT was requested vide our letter dated 5 March 2013 to furnish additional information/ clarifications on a few points. VPT has furnished its reply vide its letter dated 5 April 2013. A summary of queries raised by us and the response of the VPT is tabulated below:

Sl. No.	**Queries raised by TAMP**	**Response furnished by VPT**
(i).	VPT to furnish the basis for the proposed penal slab structures.	(a). In the present Scale of Rates (SOR), provision already exists for collection of demurrage charges after expiry of stipulated free period in respect of general / project import cargo. Inspite of the said provision, the importers / handling agents are not evacuating the cargo but are keeping it in the dock area for months together. (b). This is resulting in congestion of dock area and is creating a hurdle for heavy vehicles to move inside the dock area. (c). Due to lack of transit space, some of the vessels are diverting to neighbouring ports. (d). Hence, after conducting several meetings with the importers/handling agents, it has formulated the proposed higher penal slab structures, other than the already existing ones in the SOR, for inculcating discipline and to adhere to the shorter time limits for evacuating the cargo from the docks.
(ii).	VPT to furnish additional revenue per annum to be generated on account of this penal storage charges with workings.	(a). The intention of the port is not to generate any additional revenue on account of the proposed charges but to ensure quick evacuation, which will enable it to handle more vessels and more cargo throughput in a given limited space. (b). It is pertinent to state that port is the facilitator for imports and exports and the transit area is very crucial for port operations and therefore

		using the same as stacking/storage area even after free period is affecting the performance of port badly. (c). Several meetings were conducted with the importers and their handling agents explaining the congestion problem, but none reacted to the pleas of VPT. Hence, VPT decided to enforce a penal provision which would drive the importers/handling agents towards achieving optimum utilization of the available transit space. (d). It is also to inform that the additionally generated income on account of penal demurrage charges cannot be estimated at this stage, as it depends on the dwell time of the cargoes after enforcing the penal provisions, which cannot be assessed at present.
(iii).	Given that the VPT has submitted its proposal for general revision of its SOR, VPT to confirm whether the additional revenue to be generated by the port on account of the levy of penal storage charges has been captured in the income estimation made by the Port for the year 2013-14 to 2015-16.	In view of our remarks to item (2) above, capturing the revenue generated on account of the levy of penal charges in the income estimate does not arise.
(iv).	The VPT in its letter dated 31 January 2013 has stated that the transit time of cargo has become abnormally high resulting in high congestion. In this regard, the VPT to furnish the number of instances of congestion in the docks area due to non-removal of cargo in the past three years along with reasons for such non-removal of cargo.	(a). The month wise ground stock of general/ project cargo ground stock position is furnished for the last 3 years. (b). It is clearly evident from the statement that in the year 2010-2011, at any point of time, the ground stock did not exceed 14087 MT whereas, in the year 2011-12, the ground stock had reached upto 58061 MT in the month of May 2011. In the year 2012-13 also, the maximum ground stock of general cargo in the month of May 2012 is 54823 MT. (c). Thus, it is clear that due to non-clearance of the project/general cargo by the importers, the accumulation has been reached to peak level i.e. 54823 MT.
(v).	The VPT in its circular dated 25 January 2013 has mentioned that if the Importers/C&F Agents failed to clear the cargo from dock area the cargo is liable for sale by Public Auction as per provisions of Section 61 & 62 of MPT Act 1963. In this regard, VPT to inform whether any action has been initiated by the port in this regard till date.	Auctioning of the cargoes could not be done as some of the importers / handling agents periodically pay the demurrage charges as per the SOR. However, they are not evacuating the cargo under the pretext that customs documentation is pending.
(vi).	VPT to confirm whether the proposed penal storage charges would apply to 'Project Cargo' alone and not for Import General	The proposed penal charges would apply to both general cargo as well as project Cargo. The circular that was issued is self-explanatory in this regard.

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<td></td>
<td>Cargo, as the free period of 10 days prescribed in the penal storage slab structure pertains to Project Cargo only.</td>
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<td>(vii).</td>
<td>VPT to furnish the draft provision along with conditionalities governing the proposed provision for incorporation in the Scale of Rates of VPT.</td>
<td>(a). In response to its circular no.366 dated 31 January 2013, some of the importers / handling agents, had represented either to stop levy of the proposed penalty or to relax the time limit prescribed for evacuation of the cargo from the dock area.

(b). Keeping in view their requests, it was decided in the Port Working Committee meeting to give some more time to them for clearing general/project cargo from the dock area (unsigned copy of the minutes of the meeting dated 21 March 2013 is enclosed).

(c). Accordingly, Circular No. 366-A dated 22 March 2013 (copy enclosed) was issued giving time up to 15 April 2013 for evacuation of the cargo from the dock area.

(d). As the subject proposal is to impose penalty ranging upto maximum of 10 times of the rates mentioned in the existing SOR, the trade will tend to object the same. Hence, seeking their full consent may not be possible. At the same time, if penalty is not imposed, there is no possibility for early evacuation of the project/general cargo from the dock area, which is already got congested with the cargo

(e). In view of the above, the Authority is requested to approve and notify the penalty as per the below conditionality and rates:

“4.6.2.(b): <u>Demurrage charges on Import general / project cargo</u>:
Demurrage charges are levied on import general/project cargoes as below:

<table>
<tr><th>Sl. No.</th><th>General Cargo</th><th>Project Cargo</th><th>Description</th></tr>
<tr><td>1.</td><td>1^{st} day to 5^{th} day</td><td>1^{st} day to 10^{th} day</td><td>Free days as per section 4.6.1 of SOR</td></tr>
<tr><td>2.</td><td>6^{th} day to 25^{th} day</td><td>11^{th} day to 25^{th} day</td><td>To collect one time charges as per section 4.6.2 of SOR.</td></tr>
<tr><td>3.</td><td>26^{th} day to 40^{th} day</td><td>26^{th} day to 40^{th} day</td><td>5 times of rates mentioned in section 4.6.2 of SOR.</td></tr>
<tr><td>4.</td><td>41^{st} day onwards</td><td>41^{st} day onwards</td><td>10 times of rates mentioned in section 4.6.2 of SOR.</td></tr>
</table>
”

In addition to the above, the sub-heading of section 4.6.2. i.e. “Demurrage charge on Export/Import cargoes” of the existing SOR may be modified and notified as “Demurrage charges on Export/Import cargoes other than import general/project cargoes.</td>
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6.2. The VPT while responding to the queries raised has also forwarded a copy of Circular No.366-A dated 22 March 2013, a copy of which is attached as Annex–III to its reply dated 5 April 2013. The said circular to trade allows importers and handling agents to clear the cargo on or before 15 April 2013 beyond which the port proposes to levy the penalty (levy is same as issued in its earlier circular dated 31 January 2013). The circular states that the proposed charges are applicable to all import general/ project cargo lying in the dock area as on 22 March 2013 and the project/ general cargo that landed after the date of circular i.e. from 23 March 2013 onwards the proposed penalty will apply directly.

7.1. A joint hearing in this case was held on 20 September 2013 at the VPT premises. At the joint hearing, the VPT and the concerned users/ organisation bodies have made their submissions.

7.2. At the joint hearing, most of the users have objected the proposed penal levy and also pointed out that the existing free period of 10 days for project cargo is very less.

7.3. In this regard, as agreed by the VPT at the joint hearing, the VPT was requested to examine the request made by users and also to explore the possibility of downscaling the proposed penalty. The VPT was also requested to examine the possibility of whether the proposed levy can be made effective prospectively.

7.4. The VPT has furnished its response vide its letter dated 26 February 2014. The VPT has stated that down scaling of proposed penalty is not possible. The VPT has reiterated its request to make the proposed levy effective retrospectively.

8.1. The MBPL has furnished further comments on the subject proposal after the joint hearing vide its letter dated 4 October 2013, a copy of which was forwarded to the VPT for its comments. The VPT, vide its letter dated 20 December 2013, has furnished its comments thereon.

8.2. Thus, in short, it can be seen from the foregoing paragraphs that while responding to the queries raised by us and also while responding to comments of MBPL, the VPT has proposed following modifications vis-à-vis its original proposal:

(i). In the original proposal, the VPT had proposed separate schedule for levy of penal charges for over stayal of project/ import cargo beyond the free period linking it to demurrage charges prescribed in the Scale of Rates. The VPT has now proposed to levy proposed penalty by way of revising the existing demurrage charges itself and has proposed insertion of a separate schedule 4.6.2(b) as given below:

"4.6.2(b) Demurrage charges on import general/ project cargoes:

Sl. No.	General Cargo	Project Cargo	Description
1.	1st day to 5th day	1st day to 10th day	Free days as per section 4.6.1 of SOR
2.	6th day to 25th day	11th day to 25th day	To collect one time charges as per section 4.6.2 of SOR.
3.	26th day to 40th day	26th day to 40th day	5 times of rates mentioned in section 4.6.2 of SOR.
4.	41st day onwards	41st day onwards	10 times of rates mentioned in section 4.6.2 of SOR.

"

(ii). Consequently, the heading of existing schedule 4.6.2. as "Demurrage charges on Export/ Import cargoes" in the existing Scale of Rates is proposed to be modified as "Demurrage charges on Export/ Import cargoes other than import general/ project cargoes".

(iii). The VPT has lastly vide its letter dated 20 December 2013 agreed to increase the number of free period for project cargo from existing 10 days to 20 days.

(iv). Consequent to this modification, the VPT while forwarding the revised draft SOR in the general revision proposal vide its letter No.FA/COST/SOR/16 dated 19 November 2013 has modified the free period for project cargo as 20 days instead of 10 days prescribed in the existing Scale of Rates. As a result, the first two slabs of demurrage schedule for project cargo is also suitably modified as 1st to 20th day free instead of 1st to 10th day free, and demurrage charge for second slab is proposed for 20th to 25th day instead of 11th to 20th day given by it in the current proposal.

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

(i). The proposal of the Visakhapatnam Port Trust (VPT) is to introduce penalty on import general cargo and project cargo which is being stored in the dock area of the port for a considerable period of time. The proposal of the VPT is initiated mainly to discourage over stayal of import project cargo and import general in the dock area of the port and to ensure that importers/ exporters take necessary steps for quick evacuation of these cargo items from the dock area of the port.

(ii). Most of the users like GMR Chhasttisgarh Energy Ltd. (GCEL), MB Power (Madhya Pradesh) Ltd. (MBPL) and Lanco Amarkantak Power Ltd. (LAPL) have objected the proposed levy per se. They have submitted that evacuation of cargo takes more time than the permissible free period and moreover, the processing of documentation like custom clearance, port clearances etc., also takes its own time. They have stated that approximately it takes 10 working days for custom clearance and port clearance thereafter which evacuation can take place, which require 40 days. The users have, therefore, requested to completely waive proposed penal (demurrage) charges at 5 times or 10 times the existing rate proposed by VPT. They have also requested to increase the free period for project cargo to 50 days.

The port has in support of its proposal submitted that the importers of general and project cargo are stacking their cargo within the dock area for months together leading to congestion in the dock area. The VPT has furnished statistics in support of its claim. The project cargo of 26 vessels is reported to be lying in the port dock area of which cargo of 6 vessels pertain to the year 2011 and cargo of 10 vessels pertain to each of the years 2012 and 2013. The average ground stock of around 14,087 tonnes in January 2011 is reported to have increased to 54,823 tonnes in the month of May 2012. Despite series of meetings held by the VPT with importers/ handling agents on 12 July 2012 and subsequent meetings on 20 July 2012 and on 1 August 2012 and also in spite of assurance given by importers/ handling agents to clear the cargo from the dock area, no significant improvement in clearance of cargo is reported by the port. Huge accumulation of cargo in dock area is hurdle in movement of vehicles. Further, in view of lack of transit space, the VPT has reported that some of the vessels otherwise destined for VPT have been diverted to the neighbouring ports adversely affecting the overall revenue of the VPT.

Land is a scarce resource of the port and hence need to be utilized in an optimal manner. As rightly stated by the VPT, transit area is very crucial for port operations and therefore the same should be utilized optimally. The stacking/ storage area provided by the VPT has to be utilized for transit storage for cargo and not as a warehouse.

In view of the above position there is a strong case for considering the proposal of VPT to levy penalty for non-removal of imported general/ project cargo from the dock area.

(iii). The existing SOR under Schedule 4.6.1. Sl. No.1(i) and 1(ii) allows free period of 5 days for general import cargo and 10 days for project import cargo respectively. During the proceedings of the current proposal, in view of the demand made by some of the users like LAPL, MBPL to increase the free period for project cargo from existing 10 days to 50 days, the VPT has acceded to their request and has agreed to partially enhance the free period and proposed to increase the free period of project cargo from existing 10 days to 20 days. The increase in free period proposed by the VPT for project import cargo based on the request made by the users is accepted. It is seen that the effect of the increase proposed by the VPT in free period for project cargo is not reflected in the current proposal. The modification proposed in the free period of Project cargo by the port is, however, incorporated in its revised draft Scale of Rates filed in the general revision proposal. Accordingly, the free period for project cargo prescribed at Sl. No.1(ii) under Schedule 4.6.1. is modified as 20 days as proposed by the VPT. Consequent effect on the proposed slabs for the purpose of the proposed levy is also considered which is discussed in the subsequent paragraphs.

(iv). (a). Schedule 4.6.2. of the existing SOR of the VPT prescribes demurrage charge applicable for import cargo as well as for export cargo in three slabs beyond the prescribed free period viz. (i) for first six days at ₹18.00 per tonne/cu. mtr. or part thereof for every three days or part thereof, (ii) for the next six days at ₹36.00 per tonne/cu. mtr. or part thereof for every three days or part thereof and (iii) for the period thereafter at ₹18.00 per tonne/cu. mtr. or part thereof per day or part thereof.

(b). In the original proposal, the VPT had proposed levy of penal charges on imported general cargo and imported project cargo. The proposed penal levy is linked to demurrage charge prescribed in the Schedule 4.6.2. of its existing Scale of Rates. The penal charge proposed by the VPT beyond the prescribed free period of five days for general cargo i.e. for the slab 6^{th} to 25^{th} day was one time the demurrage rate prescribed in the Scale of Rates. For project cargo the VPT in the original proposal had retained the free period at the existing level of ten days and the penal rate proposed for the slab 11^{th} to 25^{th} day was one time the demurrage rate prescribed in Schedule 4.6.2. For both the cargo groups for the period 26^{th} to 40^{th} day, 41^{st} day to 55^{th} day and from 55^{th} day onwards penal levy at five times, ten times and ten times respectively of the demurrage rate applicable as per Schedule 4.6.2. of the existing Scale of Rates is proposed by VPT.

Subsequently, the VPT has modified its proposal wherein instead of proposing separate schedule of penal charges, it has integrated it as part of the existing demurrage Schedule. A separate schedule 4.6.2.(b)- Demurrage charges on Import general/ project cargo is proposed to be introduced by the VPT maintaining the penal levy at the level of its earlier proposal.

In the said separate schedule of demurrage proposed to be introduced, the VPT proposes to continue with the existing demurrage charge for the period after free period i.e. 6^{th} to 25^{th} day for general import cargo and 11^{th} to 25^{th} day for project cargo. The penal nature of demurrage is proposed to be levied from 26^{th} day onwards at five times and ten times the existing demurrage charge. In fact the port has retained the slabs and rates in the proposed demurrage schedule at the level of its original proposal.

The modified proposal of the VPT entails revision in the existing demurrage charge in the Scale of Rates of the VPT which ordinarily is to be processed while revising the Scale of Rates of the port as part of the general revision proposal. The VPT has not explained any specific reasons for the proposed modification of integrating the proposed penal charges with the demurrage charge. It can, however, be seen that the modified proposal is likely to avoid any ambiguity about double recovery of charge for stay of import general cargo/ project cargo for the same period in terms of demurrage charge as well as penal charge.

Moreover, steep rise in demurrage rate is proposed to inculcate mainly discipline and to adhere to shorter time limits for evacuation of cargo from the docks. The proposal is also intended to discourage overstayal of import general cargo and import project cargo which has reportedly overstayed as per the statistical data furnished by the VPT occupying the port area for a considerable time despite all the efforts made by the port for removal of this cargo. In view of the above position and considering the fact that the proposal of VPT is reportedly not with the intention to generate additional revenue to the port, this Authority is inclined to accept the modified proposal of the VPT involving modification in the schedule of demurrage charge and free period.

(v). Whilst the VPT has proposed to increase free period for project cargo from existing 10 days to 20 days it has not made suitable adjustment in the slabs while proposing the modified demurrage schedule. As stated earlier, the VPT has made necessary modification in the slabs relating to levy of demurrage charge for import project cargo and import general cargo in the revised Draft SOR furnished in the general revision proposal which is being processed separately. The first slab of project cargo is modified as 1^{st} day to 20^{th} day as free period in view of increase in the free period proposed by the VPT. Consequently, the second slab for project cargo for levy of demurrage charge has to begin from 21^{st} day. If the second slab is considered as 21^{st} day and ends on 25^{th} day as proposed by the VPT for project cargo then there appears to be overlapping while applying the rate of demurrage charge. For applicability of demurrage charge in the proposed Schedule 4.6.2.(b), it is linked to the Schedule 4.6.2. of the existing Scale of Rates. Schedule 4.6.2. of the existing SOR prescribe demurrage charge for slab of six days and the unit rates is prescribed for three days or part thereof. Thus, while applying the demurrage charge for the slab 21^{st} to 25^{th} day, there is possibility of overlapping of slabs for the project cargo because there will be a gap of only 5 days from 21^{st} to 25^{th} day whereas there is a gap of 6 days in Schedule 4.6.2. In order to avoid difficulty in the implementation of the proposed schedule, it is found necessary to adjust and modify the second slab for project cargo suitably as 21^{st} day to 26^{th} day having 6 days and the third slab as 27^{th} day to 40^{th} day instead of 21^{st} day to 25^{th} day and 26^{th} to 40^{th} day as per proposal of VPT.

Further, the demurrage charge proposed by the VPT for the last slab i.e. 55 days onwards is 10 times the rate prescribed in schedule 4.6.2. Since the rate proposed is same as the previous slab viz. 41^{st} day to 55^{th} day, it will suffice if the last slab is made as 41^{st} day onwards which will take care of the proposal of the VPT.

In view of the above analysis and consequent to modification in the free period proposed by VPT for project cargo, insertion of Schedule 4.6.2.(b) as proposed by the VPT in the existing Scale of Rates is approved subject to correctly reflecting the slabs and rates as first slab for project cargo 1^{st} to 20^{th} day free, second slab as 21^{st} to 26^{th} days at one time rate prescribed in schedule 4.6.2., third slab as 27^{th} day to 40^{th} day at five times the rate and last slab as proposed by VPT at 41^{st} day onwards at 10 times the rate prescribed in schedule 4.6.2.

Though the VPT has stated that it does not expect to generate additional revenue from the proposed modification, the VPT is requested to review the position and assess the revenue likely to accrue from the approval accorded to the proposed modification in the demurrage charge and consider its impact in its general revision proposal which it has to file after updating its original proposal.

(vi). The existing Schedule 4.6.2. prescribes demurrage charge on Export/ Import Cargo and the rate prescribed are uniform. Consequent to modification proposed in the current proposal of inserting Schedule 4.6.2.(b) pertaining to the Demurrage charges on Import general/ project cargo", the heading of schedule 4.6.2. as "Demurrage charges on Export/ Import cargoes" in the existing Scale of Rates is proposed to be modified as "Demurrage charges on Export/ Import cargoes other than import general/ project cargoes". The proposed modification is accepted except for changing the serial number of schedule as 4.6.2.(a) instead of retaining as 4.6.2.

(vii). (a). The VPT while filing its proposal dated 31 January 2013 has stated that the port has simultaneously issued a circular no.366 dated 31 January 2013 proposing to levy the proposed penal charge of 5 times and 10 times penalty on the General and Project Cargo for those shipments which are not cleared within 26^{th} day from the date of arrival and made it effective retrospectively from 1 August 2012 after allowing a week's time to clear the consignment from the dock area from the date of issue of Circular i.e. 31 January 2013. Subsequently, on the request of the users seeking extension of time for removal of cargo and objecting the proposed levy retrospectively from 1 August 2012, VPT after having held another meeting with the concerned users has issued another Circular No.366-A dated 22 March 2013 giving time up to 15 April 2013 for evacuation of the cargo from the dock area. Subsequently, VPT on the request of the users has further postponed the levy of the same vide circular dated 7 May 2013 to 5 June 2013. It is seen from the comments of the users that the VPT has started to levy the proposed penal charges on adhoc basis with effect from 5 June 2013.

(b). As per clauses 2.17.1 to 2.17.3 of the tariff guidelines of 2005, whenever a specific tariff for a service/cargo is not available in the notified Scale of Rates, the port can submit a suitable proposal. Simultaneously with the submission of proposal, the proposed rate can be levied on an ad hoc basis till the rate is finally notified. The ad hoc rate to be operated in the interim period must be derived based on existing notified tariffs for comparable services/cargo; and, it must be mutually agreed upon by the Port/Terminal and the concerned user(s). Clause 2.17.4. of the tariff guidelines of 2005 stipulates that the rate approved will ordinarily have prospective effect and in interim rate adopted in an adhoc manner will be recognised by this Authority unless it is found to be excessive.

Since the proposal of the VPT did not contain the consent of the users for levy of penal charges proposed by the VPT for non-removal of Import General Cargo/ import Project Cargo from the premises of dock area, the VPT was requested to comply with the guidelines and furnish the consent of the relevant users.

In this context, the VPT has submitted that as the subject proposal is to impose penalty, the trade will tend to object the same and hence seeking their consent may not be possible. It is the case of VPT that if penalty is not imposed, cargo will not be evacuated early to clear congestion.

(c). From the position brought out earlier, it is seen that VPT has made all efforts and provided ample opportunity to the trade to evacuate their cargo. It had conducted six meetings with the concerned users to make them to clear the cargo. There is nothing on record furnished by VPT to show that the users have taken efforts to clear their cargo from the port even though they assured to clear the cargo in the meetings held with them. As regards the suggestion made by the Visakhapatnam Customs House Agents' Association to auction the cargo the VPT has clarified that this option was also attempted, but in the absence of relevant documents like Import Application filed by the concerned user, this exercise could not be undertaken by the port.

It can be also seen that the port had series of meeting with users dated 12 July 2012, 20 July 2012 and 1 August 2012 to arrange for removal of cargo lying in the port dock area for considerable time. Simultaneously with submission of its proposal dated 31 January 2013 for levy of the proposed penalty the port has kept the users on notice to impose the proposed penal charges for non removal of cargo which was extended by the VPT on the request of users. The VPT has also offered open stacking area outside the Customs bound area (dock area) to the importers of project/ general cargo to enable them to evacuate the cargo from dock area and stack in those area under customs bonding. On enquiring the position at the joint hearing held on 20 September 2013, the VPT has reported that there has been no improvement in the situation, despite constant persuasion by the port to users for removal of cargo for several months.

It can thus be seen that despite all the efforts undertaken by the VPT since June 2012 onwards to expedite evacuation of import general cargo and project cargo, the trade does not appear to have made any serious efforts to evacuate their cargo and enable the port to use the precious dock area of the port for the cargo unloaded from subsequent vessels. The approach of the trade in the instant case clearly indicates that the trade under the shield of the guidelines is causing congestion in the VPT resulting in revenue loss to the port.

It is pertinent to state that port is the facilitator for imports and exports and the transit area is very crucial for port operations and therefore using the same as stacking/storage area by the trade even after free dwell time for a considerable period adversely affects the overall performance of port in terms of the volume and revenue of the port. In view of extraordinary circumstances in this case this Authority ratifies the action of the port of levy of the proposed charges on adhoc basis from 5 June 2013 as per its last circular dated 7 May 2013 issued to the trade. By way of abundant caution all the concerned should note that this should not be quoted as precedence in any other case by the VPT or any other Major Port Trust for seeking ratification of the rate levied by the Port trust / operator on adhoc basis without complying with provisions of clause 2.17.1. to 2.17.3. of the 2005 guidelines.

(viii). (a). Ordinarily the rate approved by this Authority comes into effect after expiry of 30 days from the date of notification of the Order in the Gazette. However, in the instant case, recognising that the users/ trade have not removed the cargo despite all the requisite efforts taken by the VPT and circular issued to the trade, it may not be unreasonable to order that the proposed amendment comes into effect immediately from the date of notification of the Order in the Gazette of India.

(b). The Scale of Rates approved by this Authority has validity period of three years. In the instance case, the tariff approved will be incorporated in the existing Scale of Rates of VPT and also in the revised Scale of Rates of the VPT which is being processed as a separate case. Hence, it is appropriate to make the validity of this tariff item co-terminus with the validity of the revised Scale of Rates of VPT (to be) approved in the general revision proposal filed by VPT which is being processed separately.

11.1. In the result, and for the reasons given above, and based on collective application of mind, this Authority accords approval to:

(i). revise the entry at serial no.1(ii) of Schedule 4.6.1. Free storage period in the transit accommodation as follows:
"ii. Project cargo 20 days"

(ii). replace the heading and the serial number of Schedule 4.6.2. in the existing Scale of Rates of the VPT as follows:

"4.6.2.(a) Demurrage charge other than import general/ import project cargo"

(iii). Insert Schedule 4.6.2 (b) relating to Demurrage charges on import general / import project cargo as follows:

"4.6.2.(b) Demurrage charges on import general / import project cargo:

Sl. No.	General cargo	Project cargo	Description
1.	1st day to 5th day	1st day to 20th day	Free days as per Scale of Rates
2.	6th day to 25th day	21th day to 26th day	to collect one time rates prescribed in Schedule 4.6.2.(a) of SOR
3.	26th day to 40th day	27th day to 40th day	5 times of rates prescribed in Schedule 4.6.2.(a) of SOR
4.	41st day onwards	41st day onwards	10 times of rates prescribed in Schedule 4.6.2.(a) of SOR

"

(iv). ratify the action of the VPT of collecting the proposed penal charges on adhoc basis from 5 June 2013 as per circular issued to the trade dated 7 May 2013.

11.2. The Order approved by this Authority will come into effect immediately from the date of notification of the Order in the Gazette.

11.3. The VPT is advised to incorporate the above modification in the existing Scale of Rates of VPT accordingly.

(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

F. No.TAMP/9/2013 - VPT - **Proposal from the Visakhapatnam Port Trust for levy of penalty for non-removal of Import General Cargo/ Project Cargo from the premises of Dock Area.**

The main points made by M/s.MB Power (Madhya Pradesh) Limited, GMR Chhattisgarh Energy Limited and Lanco Amarkantak Power Ltd. are given below:

Sl. No.	Comments of the user / user organisation
1.	**M/s. MB Power (Madhya Pradesh) Limited (MBPL) and Lanco Amarkantak Power Ltd. (LAPL)**
(i).	It is setting up coal based Thermal Power Plant capacity 1200 MW in District Anuppur in the State of Madhya Pradesh. For this esteemed project it is importing major equipments from China. As it found Visakhapatnam port to be very cooperative, MBPL is importing all the equipments under ‘Project Import’ from Visakhapatnam Port only. Till now it has already imported more than 70,000 MT project materials in last two years and all the staff and officers of Vizag port had been very humble in providing their all-out support. In the coming next six months it expects to import more than 30,000 MT (approx) material from China. LAPL is setting up coal based Thermal Power Plant capacity 2x660 MW in Chhattisgarh State. In this project, LAPL are procuring the BTG materials from offshore suppliers. LAPL have registered its project at Vizag port as the port officials are very supportive and it is convenient to LAPL for transportation of materials from the port in comparison to other Indian port. As on date LAPL have imported more than 1 lac MT at Indian port with the support of Vizag port officials. In future it expects another 7000 MT (approx.) to arrive at Vizag port.
(ii).	As per Circular no.366 A dated 22 March 2013 issued by Traffic Manager, Visakhapatnam Port, demurrage would start just after 10 days from the date of discharge of project cargo and further it increases to Five (5) times of SOR rates after 25 days of discharge of Project Cargo and to Ten (10) times of SOR rates after 40 days of discharge. The said circular was issued on adhoc basis without taking approval of TAMP. However, considering its request, VPT further reviewed the penal demurrage charges and postponed the levy of the same vide circular dated 7 May 2013 to 5 June 2013. But, after 5 June 2013 the abnormally high adhoc penal demurrage charges as per circular of Port Trust is applied. This penal rate of demurrage is very-very harsh as far as project cargo in concerned.
(iii).	The material / equipments of power plant are coming in bulk quantities in the order of 4000 MT to 6000 MT in a vessel, and evacuation of the huge quantity in such a short period is a challenge and almost impossible. Therefore, MBPL and LAPL are always forced to pay the penalty for discharge of material from port as it takes more than the permissible free period in dispatching all the material from port. Moreover, the processing of documentation like custom clearance, port clearances etc., takes their own time. Therefore, free time for evacuation of material from port is hardly left once all clearance are obtained. MBPL always try to lift the material at a faster rate but looking to various constraints it is very tough task and just near to impossible to dispatch the material in the free period.
(iv).	MBPL is importing the material from Vizag port since last two years and always cooperated with the port authorities by doing faster evacuation despite various constraints. This fact can be verified from the port records. This is evident from the Minutes of Meeting dated 12 July 2012, 20 July 2012 and 1 August 2012 (mentioned in the circular dated 22 March 2013), that MBPL has been never responsible for any congestion at port. Therefore, this adhoc penal demurrage charges imposed by the port authorities since 5 June 2013 is unwarranted, discouraging and affecting our cash flows therefore, needs immediate review and waiver of the same is requested to be considered. If the said circular is not withdrawn immediately MBPL shall not have any option but to divert our future

	cargos to some other port. As on date LAPL has already transported more than 88,000 MT at its site with the support of Vizag officials as LAPL need all these materials urgently at site. LAPL has always cleared the materials arrived at port within a very short span of time so that it does not affect the port operation. But since past few months LAPL is not able to clear the materials lying at port due to financial constraint faced by the company as LAPL is also affected by the prevailing economic situation in the country and power sector in particular.
(v).	It is submitted that the practical difficulties faced by MBPL and LAPL may be considered and the circular dated 22 March 2013 issued by the Traffic Manager, VPT may be withdrawn.
(vi).	MBPL and LAPL have requested to consider the following: (a). As project cargos are coming in bulk (4000 MT to 6000 MT in a vessel) and requires approximately 10 working days for custom clearance and port clearance, atleast 40 days free period without any demurrage charges should be given for lifting the material from port. (b). Demurrage at the rate of SOR shall be charged only after 50 days (10+40) from the date of discharge of project cargo. (c). The penal demurrage charges above the SOR rates (5 times or 10 times) should be completely waived off for project cargo as importer has no interest in keeping their valuable material at port for longer time. It is assured that the material will be dispatched from port as quickly as possible.
2.	**GMR Chhattisgarh Energy Limited**
(i).	GMR Chhattisgarh Energy Limited is a 100% subsidiary of GMR Energy Limited setting up 2 x 685MW Coal based thermal power plant at Raikheda, Raipur District, Chhattisgarh State.
(ii).	We opted for import of all the project cargo through Visakhapatnam Sea Port. Further, we are also planning our coal imports during operation of the power plant through Visakhapatnam Sea Port and we have already obtained the "No Objection Certificate" from Traffic Manager for importing coal.
(iii).	We have so far imported 89182 MT with the value of USD 705 million (approx.) resulting in revenues to Visakhapatnam Sea Port by way of port charges etc. to the extent of ₹6.23 crores (approx.). We have cleared all our shipments which have arrived at Visakhapatnam port by paying all the port charges and demurrages to port authorities as on date.
(iv).	During January 2013, a circular was issued by Tariff Manager Vizag Port vide circular no.366 dated 31 January 2013 proposing 5 times and 10 times penalty on the General and Project Cargo for those shipments which are not cleared within 26^{th} day from the date of arrival and also circular was made effective from 1 August 2012 with retrospective effect.
(v).	Most parties took immediate steps at huge additional costs by way of transportation costs due to the heavy congestion of moving out cargo from the port.
(vi).	The power sector is going through difficult times due to issues related to fuel supply and poor financial status of distribution companies. Our cash flows are affected due to non-receipt of timely payments and timely disbursement of loan amount from financial institutes. The devaluation of Rupees has further strained our financial position. We come under provisional mega power status for which we have to submit Bank Guarantees (Custom duty) which further delays the custom clearance process. Hence under this situation there could be minor delay in clearing the goods. However, we have cleared all the shipments within the stipulated time without any penalty.
(vii).	Further, we also bring to your notice that such a levy (to the extent of 5 times and 10 times penalty as per Standing Operating Rates) has not been proposed/ levied in any Government ports. Such huge disparities in the port charges & penalties among different ports will also result in not providing level playing field to various power developers utilizing different ports due to the location of their project. The present proposal of penalty is unreasonable and will severely impact the industry which is going through a difficult phase.

2. A joint hearing in this case was held on 20 September 2013 at the Visakhapatnam Port Trust (VPT) premises. At the joint hearing, the VPT and the concerned users/ organisation bodies have made the following submissions:

GMR Chhattisgarh Energy Limited

(i). Delay in clearance of cargo is the main reason for the port to introduce the proposed penalty for non-removal of project and general import cargo.

(ii). We did not consider this penal levy while quoting the rate to the Government.

(iii). Our project cost will go up if the proposed penal levy is approved.

(iv). Depreciation in Rupee has also affected us.

(v). We chose Vizag port as it has all the facilities.

(vi). Port earns huge revenue from the project cargo we bring.

(vii). TAMP should not consider the proposal of port.

MB Power (Madhya Pradesh) Limited

(i). We are importers of capital goods at VPT for our power project at Madhya Pradesh. Regularly we lift all our material from the port.

(ii). Of late there is delay in clearance of cargo from the port area due to delay in custom formalities. Customs now require us to make Bank Guarantee.

(iii). The existing free period of 10 days for project cargo is less.

(iv). Free period may be increased to 25 days beyond which there can be 5 times penalty if cargo is not removed.

(v). Vizag port suits our power plant. However, if the current proposal of the port is approved, we will shift to Gangavaram Port.

(vi). TAMP should not go ahead with the current proposal of the port.

(vii). Ad-hoc collection of the proposed levy by the port must be withdrawn and refunded.

Lanco Amarkantak Power Ltd.

(i). Proposed penalty is very high.

(ii). Our cargo comes in big vessel.

(iii). There are lot of changes in getting clearance from Customs. Obtaining bank guarantee under the new process involves time.

(iv). Free period of 25 days must be allowed.

(v). Reduce the proposed penalty at 5 times the existing charges.

Lee & Muirhead Pvt. Ltd.

(i). Huge cargo volume is handled from Visakhapatnam Port. The proposed increase will adversely affect our projects.

Visakhapatnam Customs House Agents' Association

(i). Port gets highest revenue from project cargo by levying 1.3% ad-valorem wharfage rate.

(ii). There is change in the Customs policy. Duty is to be deposited by way of bank guarantee instead of earlier system of cash deposit. Hence, there is abnormal delay in custom documentations.

(iii). Cargo has to be kept in port.

(iv). Additional levy beyond demurrage charge is not required. All factors are already considered for arriving at the existing rates.

(v). Why does the port not auction the goods which are not cleared as per the provisions in the Major Port Trusts Act, 1963 ?

(vi). Neighbouring ports give 45 to 60 days free period for such cargo.

Visakhapatnam Port Trust

(i). Presently, project cargo of total 26 vessels, viz. 6 vessels pertaining to the year 2011, 10 vessels of the year 2012 and 10 vessels of the year 2013 are lying in the port.

(ii). Project cargo is dumped inside in the port like dumping yard.

(iii). Six regular meetings were conducted by the port with the concerned users to clear the cargo. However, there has been no action or response from the trade to clear their cargo from the port even though they assured to clear the cargo in the meetings held with them.

(iv). After waiting for 6 months, as there was no alternative, port thought to auction this cargo. But, for auction no documents are available. It is not possible to auction the cargo unless Import Application is filed.

(v). Finally to alert the users, port issued the circular to impose penalty if cargo is not cleared within the stipulated time.

(vi). Trade, however, requested to extend the circular which was accepted by the port on two occasions. Still, there is no improvement in clearance of cargo.

(vii). Project Cargo of 26 vessels are lying in the port in a pathetic situation. We cannot enter the port or show the port to any important functionaries when they visit.

(viii). This cargo occupies most valuable paved area of the port.

(ix). Let the trade take land outside the port in bonded area and shift their cargo.

(x). They keep the cargo in the port as they find it safe and secure at minimal cost. Very cheap space is available in the port and hence the cargo is kept here.

(xi). 25% rebate in wharfage rate is given to project cargo. There are instances where still trade has not even paid wharfage after clearing the cargo.

(xii). Port is chocked up. We cannot handle other vessel/ cargo which sends bad signal. It also adversely affects port revenue.

(xiii). Penal charges is not collected from the date the cargo is discharged from the vessel. But, from the date the circular is issued.

(xiv). We do not intend to enhance revenue by imposing the penalty.

3. A summary of the further comments made by MBPL after the joint hearing and the comments of VPT thereon are given below:

Sr. No.	M/s. MB Power (Madhya Pradesh) Ltd.	Visakhapatnam Port Trust
(i).	We are hopeful that authorities will consider our request submitted vide letter dated 13 September 2013 and subsequently explained during the joint hearing.	(i). Regarding levy of penalty for delays in removal of Project cargo from Dock area, with retrospective effect, the following remarks are offered. (a). The points raised by M/s. MBPL and others are not new and considering all the factors which were discussed in several meetings held on the subject matter, a decision has been taken by the VPT to impose a stringent mechanism to enable non-utilization of valuable transit space in Dock Area as a "Long served stack yard" and also to avoid possible diversion of vessels to other ports which arose due to lack of sufficient penalty had Stringent mechanism enabled clearance of long dwelled general / project cargo from the Port. (b). In this context, it is to state that the circular imposing 10 times demurrage charges as penalty was issued initially on 31.01.2013 and on request of the "Importers/Agents of Project/General Cargo, time was given upto 5th June 2013 in a phased manner. Thus, ample time was given to the importers/agents. Prior to issue of circular dt.31.01.2013 several meetings were conducted by the Port with Importers/their agents regarding evacuation of cargoes from the dock area, but were in vain. The importers since 31.01.2013 have gained time till 5.06.2013 under one or the other pretext, but have failed to comply their own committed time lines of cargo clearance. This clearly indicates that they have utilized VPT transit area as a stack yard for their own reasons. (c). VPT has to consider all factors such as availability of space for stacking, truck/cargo maneuverability etc. before berthing another vessel of general cargo/Project cargo. To ensure this logistic functioning, VPT has to emboss upon quick cargo clearance within a reasonable time. However, the Importers/their cargo handling agents have miserably failed to act so, thereby throwing the Port into an abnormal state of "space congestion". (d). VPT has also offered open stacking area outside the Customs bounded area (dock area) to the importers of Project/general cargo to enable them to stack their cargo in those area under customs bonding. This step
(ii).	Kindly withdraw Circular no.366 A issued vide No.ITRA/CBD/FPOL Ltd. 22 March 2013 by Visakhapatnam Port and direct VPT for refund of the entire penalty collected so far from the importer of material under Project Cargo as per said circular.	
(iii).	As project cargos are coming in bulk (4000 MT to 6000 MT in a vessel) and requires approx. 10 working days for custom clearance and port clearance and thereafter dispatches can be commenced. Therefore, atleast 40 days free period without any demurrage charges should be permitted for lifting the material from port.	
(iv).	Demurrage at the rate of SOR shall be charged only after 50 days (10+40) from the date of discharge of Project Cargo.	
(v).	The penal demurrage charges above the SOR rates (5 times or 10 times) should be completely waived off and discontinued for project cargo as importer has no interest in keeping their valuable material at port for longer time as same are required for execution of their projects. We would also like to submit here that no material of ours is pending for dispatch at Vizag port for longer time and only the material which has come recently is at port and which is also under dispatches now. In view of above, we would request your goodself to consider our above request and issue the necessary notification / circular accordingly.	

		enables the importers to transfer their discharged cargo to the licenced plots within a reasonable period of time, thereby making the Port, congestion free. Also the burden of final documentation before clearance from dock area, will not figure as an issue for them. Further, the importers are having a provision to apply for waiver as per the Govt. guidelines if there are merits in their case after due payment of the charges. (e). As the said proposal of 10 times is to impose penalty ranging upto 10 times (max), the Trade tend to object the same and hence seeking their full consent may not be possible. At the same time, if penalty is not imposed, there is no possibility for early evacuation of the project/general cargo from the dock area, as was experienced earlier. Hence, it may not be seen as an intentional non compliance of the clauses 2.17.1 to 2.17.3 of the 2005 Tariff guidelines. (f). The request of M/s. MBPMPL and others for 50 days free period cannot be considered given the limited transit area available and the inflow of general/project cargo traffic. However, the free period for project cargo may be modified as 20 days for project cargo.

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