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Tariff Authority for Major Ports

G No. 110

New Delhi,

18 April 2013

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 (VPT) relating to the request of VPT to reconsider the decision taken in Order No.TAMP/13/2009-VPT dated 18 February 2011 in Para 20 (xxxvi) refraining the port from collecting Dredging and Spillage Charges, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/59/2011-VPT

Visakhapatnam Port Trust

- - -

Applicant

QUORUM:

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

ORDER

(Passed on this 25th day of February 2013)

This Authority had passed an Order No.TAMP/13/2009-VPT dated 18 February 2011 revising the Scale of Rates of Visakhapatnam Port Trust (VPT). The said Order was notified in the Gazette of India on 31 March 2011 vide Gazette No.65.

2. In the proceedings relating to the general revision proposal of VPT, which culminated into tariff Order dated 18 February 2011, the Visakhapatnam Stevedores' Association (VSA) vide its letter dated 22 December 2010 had expressed grievance due to some unauthorized billing by VPT on three issues viz. (a). Dredging and spillage charge for cargoes (b). Charges for damages to wagons and (c). Penal charges for non-clearance of cargo at inner harbour berths.

3. This Authority vide its Order dated 28 September 2012 had disposed off the two issues relating to charges for damages to wagons and Penal charges for non-clearance of cargo at inner harbour berths and had deferred the matter relating to the Dredging and spillage charge on cargo. The matter relating to the Dredging and spillage charge on cargo raised by the VSA is now taken up for disposal.

4.1. During the processing of the general revision proposal of VPT, the VSA had made the following submissions with regard to the issue relating to Dredging and spillage charge:

- (i). When cargo is shifted from vessels, there are some spillages and these spillages are removed when the berths are dredged. The VPT is imposing cost of such dredging as spillage charges to the vessels. The Scale of Rates (SOR) of VPT does not specify rates for such items.
- (ii). Such billing has been protested by the VSA on the following two grounds:
 - (a). The dredging being undertaken by port is part of maintenance dredging which is already budgeted in the cost and is being recovered through vessel related charges like berth hire or pilotage. This amounts to double recovery.
 - (b). If it is a penalty, the rules for imposing such penalties and the methodology for calculation is not spelt out anywhere and most importantly is never notified in the gazette by TAMP.
- (iii). VSA furnished copies of bills in support of their representation and had requested the Authority to issue suitable instructions to VPT in this regard.

4.2. At that time, a copy of the said communication of VSA was forwarded to VPT with a request to VPT to examine and furnish its comments on the points made by VSA. Further, the VPT was also requested to clarify the tariff arrangement under which the charges, which do not have approval of TAMP, are being levied. The port had not responded.

4.3. In this backdrop, this Authority while disposing off the general revision proposal of VPT, restrained the port from collecting charges on adhoc basis which do not have sanction of this Authority or are not in compliance with clause 2.17.1 to 2.17.3 of the tariff guidelines. Further, it was held that if any charges beyond the provision of the Scale of Rates are collected by the port, then the port should arrange to refund the same vide para 20 (xxxvi) of the Order of February 2011.

5.1. With reference to the decision of this Authority in this regard, the VPT vide its letters dated 25 April 2011 and 21 June 2011 has stated that by the time the port could furnish clarification on the submission made by the VSA, this Authority had already finalized and passed its order refraining VPT from collecting charges which does not have the sanction of this Authority.

5.2. The VPT has furnished its comments on the points made by VSA and has requested this Authority in its letter dated 21 June 2011 to examine the same and reconsider the Order. It has stated that the proposed charges were duly discussed with the trade and is only meant for recovery of the expenses incurred by the VPT. The comments furnished by the VPT on the issue of Dredging and spillage charges raised by VSA are given below:

- (i). The opinion of the VSA that the dredging cost for clearance of spillage is accounted for while fixing the tariff is not correct. It is clarified that VPT had entrusted the work of Maintenance dredging to M/s.DCI Ltd., for dredging of soft soil and rock dredging by way of suction dredging.
- (ii). The suction dredgers are not suitable for dredging along side the berth structures. As such, the cargo spilled while loading/ unloading is to be cleared by grab dredging and for this purpose, port dredgers are used for clearing the spilled cargo along side the berth.
- (iii). The cost towards clearance of spillage in the seawaters is to be borne by the vessel owner/ stevedore agent. Keeping this in view, after discussion with Trade, a transparent procedure for recovery of dredging/ spillage charges was evolved and a circular was issued to the trade. The VPT has enclosed a copy of the Circular issued on 31 January 2011, communicating the Trade the procedure for recovery of dredging charges on cargoes fallen into the seawaters at the time of shipment/ discharge.
- (iv). As spillage is not a regular phenomena and differs from cargo to cargo, no separate rate is fixed for spillage. Actual cost incurred by port for clearance of the same are collected from the agent based on the no. of hours the dredger worked. Hence, there is no double recovery of charges as opined by the VSA.

6. In this context, the port was requested to furnish additional information/ clarifications on a few points on the Dredging and Spillage charges vide our letter dated 6 July 2011. The VPT has responded vide its letter dated 26 July 2011. The summary of the clarifications sought by us and reply furnished by the port on the issue relating to Dredging and Spillage charges is tabulated below:

Sl. No.	Clarifications sought by us	Reply furnished by the port
(i).	Explain the basis how the dredging cost to be recovered from the trade is determined as the SOR approved by the Authority does not prescribe any charge for hire of the port dredger.	As per Delegation of Powers (2.46) U/S 21 of MPT Act 1963, Chairman is competent for "Fixation of hire charges to Visakhapatnam Port Trust equipment which does not include in the VPT Scale of Rates for occasional lending". As such, cost to be recovered from the users for clearing spilled cargoes in to sea waters, using port dredgers, is being worked out based on the charges fixed and approved by the Chairman under said delegation of powers.

(ii).	The document furnished by the port is the circular issued by the port to the trade about levy of dredging charges for cargo spilled in the sea. The document does not reveal that the levy collected is with the consent of the users. The port is requested to provide documentary evidence showing that the consent of users was obtained for the said recovery and to show that the action of the port of recovery of such charges complies with clause 2.17.1 to 2.17.3 of the tariff guidelines.	In respect of dredging and spillage charges, it is to state that it is the responsibility of the Port Trust to always maintain berths at their notified drafts for overall benefit of trade and to accommodate vessels arriving with such notified drafts. Any reduction in the depths of the berths will lead to detaining of vessels for want of suitable depths especially in respect of bulk cargo handling. There is every possibility of falling of cargoes into sea water which consequentially reduce the depths at the berths. As per the past experience, despite of several requests, the Cargo Handling Agents have failed to contain the spillage of cargoes into the sea water and it had been inevitable for the Port Trust to deploy its Dredger and to make up the reduced depths to that of the notified depths. Hence, the cost of deployment of dredger as per the actuals are being levied on the Cargo Handling Agents who are responsible for spilling cargoes into sea water. These charges act as a deterrent for those who handle the cargoes without taking reasonable measures to prevent such spillage. This issue is discussed informally with the Trade Users and at their instance only the procedure for recovery of cost for clearing spillage has been circulated to the Trade.
(iii).	Clarify whether the recovery of dredging cost was factored in the income estimates during the last tariff revision. The quantum of such recovery considered in the income estimates may be spelt out yearwise.	Recovery of dredging cost towards clearing of spillage was factored in the income estimates under Finance & Miscellaneous Income. The quantum of such recovery estimated was ₹1.90 crores for the years 2010-11 to 2012-13 and the same was considered in total Finance & Miscellaneous Income in the cost sheets submitted to TAMP while furnishing the proposal for revised SOR.

7. Subsequently, the VSA vide its letter dated 29 September 2011 by referring to the para 20 (xxxvi) of the Order of February 2011, has stated that the VPT has not entertained its refund claims as per the decision of the Authority but it is still continuing to raise fresh bill on these items and has requested to intervene in the matter by advising port to comply with the Order of the TAMP.

8. In this backdrop, it was decided to process the request of VPT to reconsider the decisions recorded in Order No.TAMP/13/2009-VPT dated 18 February 2011 at para 20 (xxxvi) refraining the port from collecting dredging and spillage charges not approved by TAMP.

9. In accordance with the consultation process prescribed, a copy each of the VPT letters dated 25 April 2011, 21 June 2011 and 26 July 2011 alongwith VSA letter dated 22 December 2010 was circulated to the concerned users / user associations for seeking their comments. The comments received from the users/ user associations were forwarded to the VPT as feedback information. The VPT vide its letter dated 3 February 2012 has furnished its response on the comments of Visakhapatnam Stevedores Association (VSA). The VPT has not responded to the comments of Vizag Seaport Private Limited (VSPL).

10.1. A joint hearing in this case was held on 17 April 2012 at the VPT premises. The VPT made a power point presentation of its reference. At the joint hearing, the VPT and the concerned users/ organisation bodies have made their submissions with regard to Dredging and Spillage.

10.2. As advised at the joint hearing, the VPT was requested vide our letter dated 20 April 2012 to fine tune the procedure for the recovery of the dredging charges on the cargo spillage in consultation with the Visakhapatnam Stevedores Association and forward its report by 1 May 2012 so that the procedure can be considered for formal inclusion in the Scale of Rates of VPT.

10.3. With reference to the two meetings conducted by VPT with the Trade, the VSA vide its letter dated 29 May 2012 has furnished its submissions which are given below:

- (i). VPT has conducted two meetings with members of Trade on 27 April 2012 and on 7 May 2012 upon the advice of the Authority to discuss and formulate a transparent policy agreeable for both the parties. During the meeting, VSA made it clear that existing procedure is to be fine tuned in the interest of all concerned and a methodology to be evolved for a transparent procedure to be followed for future transactions.
- (ii). VSA has requested VPT to arrange for refund of the charges collected unauthorizedly from the members of the trade as the same were not in line with the tariff guidelines and are arbitrary. The Trade also requested VPT for a confirmation of actual cost of dredging per cubic meter/ per shift basis and the cost has been recovered elsewhere through other heads like wharfage, pilotage etc., and Port dues.
- (iii). Further, Trade expressed their willingness to discuss the issue further once VPT confirm and establish that they are not recovering these costs twice from the Trade. VPT has also conveyed that another meeting will be fixed once the required data is ready to discuss and sort out the matter once for all in the interest of all concerned.
- (iv). VSA has forwarded a copy of letter dated 9 May 2012 addressed to VPT informing the minutes of the meeting dated 27 April 2012 and 7 May 2012. The points made by VSA in its letter dated 9 May 2012 are as follows:
 - (a). Meeting dated 27 April 2012:
Trade requested VPT to clarify whether the bills raised till date were in the nature of 'penalty' or for the purpose 'cost recovery'. VPT confirmed that the bills were for 'cost recovery'. VPT further mentioned that only VPT dredgers were utilised for the purpose of dredging alongside the berths. Trade wanted data from VPT that the charges for VPT dredgers were not recovered elsewhere and to convince the Trade that the charges were not being recovered twice. Trade expressed their willingness to discuss the issue further once VPT confirms and proves that they are not recovering these costs twice from the Trade.
 - (b). Meeting dated 7 May 2012:
VPT has provided the data of dredged quantity in cubic meters for the year 2001 to 2012 and also indicated the recoveries made by VPT from the users since 2003 to 2012. On receiving the data, the Trade requested VPT not to recover any dredging charges from the users as the method of dredging and charges collected thereon is absolutely wrong and against the interest of the Trade and not in line with the tariff guidelines. The Trade also requested to make refund the spillage charges collected so far from the Trade and expressed their willingness to formulate modalities for fixation of reasonable charges incase of any violation of policy that will be formulated for future requirements. Trade also requested to confirm the actual cost of dredging and the cost has been recovered elsewhere through other heads like wharfage, pilotage, etc. Further, Trade expressed their willingness to discuss the issue further once VPT confirm and proves that they are not recovering these costs twice from the Trade.

- (c). The Trade requested VPT to have another meeting on 9 May 2012 to discuss the issue once again and sort out the same to protect the interest of all concerned.

11. After a reminder, the VPT vide letter dated 19 May 2012 has submitted the following:

- (i). VPT held meetings with the Trade on 27 April 2012 and 7 May 2012 and the issue was discussed in detail. With regard to the recovery of the dredging charges on cargo spillages, the Trade requested to provide data for the last 10 years (2001-2012) as to how much quantity of dredged material had been removed and also requested to confirm that the charges of VPT dredgers, were not recovered elsewhere and that the charges were not being recovered twice.
- (ii). As per the request of the Trade, VPT has provided data for the last 10 years. On receiving the data, the Trade informed VPT that they would analyse the data and would come out with a suitable proposal regarding the rate to be charged in future, which is to be loaded on any one of the components of port dues, berth hire charges, etc.
- (iii). VPT informed the Trade that the dredging charges are being collected on actuals for the cost incurred by VPT in maintaining the designed depths at the berth and refunding the same does not arise. Trade did not accept the recovery of the cost of spillages.
- (iv). In this context, it is once again reiterated that the stand taken by VPT is justified in view of the following:
 - (a). As per Section 29 of Visakhapatnam Port dock Regulations 1967 "No cargo, Goods or substances whatever shall be deposited, thrown or allowed to fall from any vessel, quay or pier into the port channel or entrances or into the port. In the event of any such cargo, goods or substances being so deposited, thrown or allowed to fall as aforesaid, the person, master owner or Stevedore in whose charge the cargo, goods or substances was at the time shall be responsible and shall be liable for any loss or damage which may arise in consequences."
 - (b). As provided in Dock Regulations, whenever there are any spillages of cargo, VPT is clearing such cargoes from port waters and the cost is being collected from users. These charges are collected from particular vessel that cause spillage and it is not a common charges for all vessels and charges in proportion to the time of dredger worked for clearing cargo.
 - (c). Spillage is not a common phenomena and different from cargo to cargo, no separate rate is fixed for spillage and actual cost incurred by VPT for clearance of the same are proposed to collect from the agent basing on the No. of hours the dredged worked.

12. Thereafter, the VSA vide its letter dated 20 July 2012 has furnished its additional comments. The comments received from the VSA were forwarded to VPT for their comments. After reminder, the VPT vide its letter dated 12 September 2012 has furnished its reply. A summary of the additional comments received from VSA and reply of VPT thereon are tabulated below:

Sl. No.	Additional comments received from VSA	Reply of VPT
(i).	During the meeting, the Traffic Manager assured us to formulate a transparent policy agreeable for both the parties after fine-tuning existing procedure for future transactions in the interest of all concerned. VPT was	

	also requested to arrange for refund of charges collected un-authorizedly from the members of the Trade as the same were not in line with the tariff guidelines and are arbitrary. The Trade also requested VPT for confirmation of actual cost of dredging per cu.mtr./ per shift basis and the cost has been recovered elsewhere through other heads by wharfage, pilotage and port dues etc. VPT has also conveyed that another meeting will be fixed once the data is ready to discuss and sort out the matter once for all in the interest of all concerned. However, VPT has not called for a meeting so far to discuss the subject matter.																																																																																	
(ii).	During the meeting, VPT has also confirmed that the recoveries were made on actual cost to cost basis and they have provided the following data on our request. <u>Year wise data of dredging quantities:</u> <table><tr><th>Year</th><th>East Quay Qty in M³</th><th>West Quay Qty in M³</th><th>GCB & CB Qty in M³</th><th>Total Qty in M³</th></tr><tr><td>2001-2002</td><td>3,470</td><td>15,132</td><td>10,610</td><td>29,212</td></tr><tr><td>2002-2003</td><td>1,635</td><td>8,444</td><td>33,807</td><td>43,886</td></tr><tr><td>2003-2004</td><td>6,873</td><td>8,915</td><td>17,427</td><td>33,215</td></tr><tr><td>2004-2005</td><td>7,479</td><td>19,144</td><td>19,870</td><td>46,493</td></tr><tr><td>2005-2006</td><td>537</td><td>22,580</td><td>20,361</td><td>43,478</td></tr><tr><td>2006-2007</td><td>1,140</td><td>8,796</td><td>6,963</td><td>16,899</td></tr><tr><td>2007-2008</td><td>4,345</td><td>25,872</td><td>12,634</td><td>42,851</td></tr><tr><td>2008-2009</td><td>2,178</td><td>28,158</td><td>23,412</td><td>53,748</td></tr><tr><td>2009-2010</td><td>1,659</td><td>29,414</td><td>11,933</td><td>43,006</td></tr><tr><td>2010-2011</td><td>2,756</td><td>13,596</td><td>3,113</td><td>19,465</td></tr><tr><td>2011-2012</td><td>15,920</td><td>16,549</td><td>--</td><td>32,469</td></tr></table> <u>Billing for spillage of cargo</u> <table><tr><th>Year</th><th>Amount (in ₹)</th></tr><tr><td>2003-2004</td><td>20,97,783.00</td></tr><tr><td>2004-2005</td><td>7,24,076.00</td></tr><tr><td>2005-2006</td><td>6,45,644.00</td></tr><tr><td>2006-2007</td><td>4,25,246.00</td></tr><tr><td>2007-2008</td><td>3,16,231.00</td></tr><tr><td>2008-2009</td><td>22,31,300.00</td></tr><tr><td>2009-2010</td><td>1,15,55,850.00</td></tr><tr><td>2010-2011</td><td>2,36,70,365.00</td></tr><tr><td>2011-2012</td><td>38,89,580.00</td></tr></table>	Year	East Quay Qty in M ³	West Quay Qty in M ³	GCB & CB Qty in M ³	Total Qty in M ³	2001-2002	3,470	15,132	10,610	29,212	2002-2003	1,635	8,444	33,807	43,886	2003-2004	6,873	8,915	17,427	33,215	2004-2005	7,479	19,144	19,870	46,493	2005-2006	537	22,580	20,361	43,478	2006-2007	1,140	8,796	6,963	16,899	2007-2008	4,345	25,872	12,634	42,851	2008-2009	2,178	28,158	23,412	53,748	2009-2010	1,659	29,414	11,933	43,006	2010-2011	2,756	13,596	3,113	19,465	2011-2012	15,920	16,549	--	32,469	Year	Amount (in ₹)	2003-2004	20,97,783.00	2004-2005	7,24,076.00	2005-2006	6,45,644.00	2006-2007	4,25,246.00	2007-2008	3,16,231.00	2008-2009	22,31,300.00	2009-2010	1,15,55,850.00	2010-2011	2,36,70,365.00	2011-2012	38,89,580.00	Regarding Spillage charges: “the spillage charges were recovered by VPT for the years 2007-08 and 2010-11 basing on the approved daily dredging rates of port dredger GHD Sagar Durga, but not on the yearly maintenance dredging quantity. In the year 2007-08 and 2010-11 a total of 01 ship and 48 ships respectively were billed for spillage of cargo. Accordingly, a sum of ₹3,16,231/- and ₹2,36,70,365/- were recovered for the year 2007-08 and 2010-11 respectively”. Further, spillage of cargo for soluble fertilizers is not being billed w.e.f. January 2011 and refunds are considered. These dredging charges were collected from the specific vessels that caused spillages and it is not common charges for all vessels and charges are in proportion of the actual time the dredger worked for clearing of spilled cargo. Therefore, there could not be a uniform rate for spillage clearing and hence not notified in the Scale of Rates. In order to maintain depths at notified drafts, port always deploys port dredgers and charges were proposed based on the number of shifts deployed the dredging activity. It is to reiterate that as per the delegation of powers 2.46 U/S 21 of MPT Act 1963, Chairman is the competent authority for fixation of hire charges to VPT. In view of the above, it is clarified that the collection to dredging and spillage charges for cargoes into port waters by concerned vessels is to be recovered from the trade only as VPT dredgers have been deployed to work and necessary spillage charges are recovered, which is justified.
Year	East Quay Qty in M ³	West Quay Qty in M ³	GCB & CB Qty in M ³	Total Qty in M ³																																																																														
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(iii).	The above data shows that the recoveries made by VPT were baseless and not in proportion with the actual cost incurred for such dredging. During the year 2007-08, VPT has incurred/ recovered an amount of ₹3,16,231/- for dredging a quantity of 16,899 M³ and during 2010-11, VPT has incurred/ recovered an amount of ₹2,36,70,365/- for dredging a quantity of about 19,465 M³ which shows the arbitrary nature of recoveries. Further, VPT has also recovered spillage charges for urea and iron ore which shows the erratic billing and arbitrary recoveries made by VPT which is not at all justified. The urea will dissolve in water and there is no possibility of dredging expenses on this account. Further iron ore is an export cargo which is to be loaded by grabs from the wharf and there is no possibility of spillages of the same.																																																																																	

(iv).	In view of the above submissions, it is felt that there is no justification for the above recoveries on account of spillages and VPT may be directed to arrange for refund of the amounts recovered so far un-authorizedly from the Members of the Trade and also direct VPT to formulate a policy/ methodology in consultation of the Members of the Trade in all fairness and transparency. VPT may also fix-up suitable penalties upon implementation of policy formulated for all future transactions in consultation with Members of the Trade and upon approval of the policy by TAMP/ Board of Trustees.	
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13. 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>.

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

- (i). During the proceedings relating to the general revision proposal of VPT, which culminated into the tariff Order of February 2011, one of the user organisations viz., Visakhapatnam Stevedores' Association (VSA) had represented to this Authority with regard to the reported unauthorized billing by VPT on the following three items, viz.

- (a). Dredging and spillage charges for cargoes.
- (b). Charges for damages to wagons.
- (c). Penal charges for non-clearance of cargo at inner harbour berths.

An opportunity was given to VPT to furnish its comments on the representation of VSA. However, the response of VPT was not received till finalisation of the case at that relevant point of time.

- (ii). The VPT has stated that by the time it could furnish clarification on the submission made by the VSA, the Authority had already finalized and passed its order, *inter alia*, refraining VPT from collecting charges which do not have the sanction of the Authority. In this regard, it is relevant to mention here that the reference dated 22 December 2010 made by the VSA to this Authority with regard to the reported unauthorized billing by VPT was forwarded to VPT for their comments vide our letter dated 10 January 2011. The VPT responded to the comments made by VSA only in April 2011 vide its letter dated 25 April 2011, well after communication of the Order of February 2011 vide our letter dated 6 April 2012 to VPT. The VPT had more than a month's time to respond before the matter was taken up for final consideration by this Authority in February 2011.
- (iii). Out of the three issues referred by the VPT, this Authority vide Order No.TAMP/59/2011-VPT dated 28 September 2012 had already disposed the two issues relating to charges for damages to wagons and Penal charges for non-clearance of cargo at inner harbour berths. With regard to the issue relating to the Dredging and spillage charges on cargo, this Authority had then decided to defer the matter. Accordingly, the issue relating to the Dredging and spillage charges of cargoes is now taken up for consideration.
- (iv). A Port Trust maintains the berths at their notified drafts to accommodate vessels which call on the port with such notified drafts. Since there is spillage of cargo during cargo operation, which may affect the level of drafts, the VPT clears such spillages from port waters using port dredgers.

- (v). According to VSA, the cost of dredging to clear the spillage, forms part of maintenance dredging and that the cost of maintenance dredging has been captured in the fixation of the existing Scale of Rates of VPT. The VSA, therefore, contends that levy of charges by VPT for clearing the spillage is a double recovery. In this regard, VPT has clarified that spillage clearance is done by VPT using the port's grab dredger whereas maintenance dredging entrusted to the M/s.DCI Ltd., is done by suction dredger. Since the dredger is deployed by the port to clear the spillage, the port incurs expenditure for operation of the dredger; and therefore, it recovers the expenditure from the concerned parties responsible for causing spillage. Therefore, the contention of VPT is that levy of charges for clearing the spillage is not a double recovery. In this regard, it may be relevant to mention here that the Port Trust cannot be expected to render service free of cost. However, at the same time, it has to be recognised that cost recovery should be as per the tariff setting arrangement envisaged in the Statute.
- (vi). (a). Sections 48 and 49 of the Major Port Trusts Act, 1963 call upon this Authority to frame Scale of Rates for services performed by a Board and for use of property belonging to a Board. Therefore, the rates for the services performed by a Board or the rates for use of property of a Board are required to be fixed by this Authority.
- (b). The existing Scale of Rates of VPT approved by this Authority vide Order of February 2011 in exercise of powers conferred under Sections 48 and 49, among other sections of the Act, does not prescribe any charge for hire of the port dredgers. To a query in this regard, it is the position of the VPT that the Chairman of the VPT has approved charges for use of port dredgers exercising powers reportedly delegated to him under Section 21 of the Major Port Trusts Act, 1963. Section 21 of the said Act, *inter alia*, provides that a Board of the Port Trust may authorise its Chairman to exercise its powers conferred on it or authorise its Chairman to perform its duties imposed upon it. Section 21 is only an enabling provision for delegation of powers by the Board of a Port Trust to its Chairman. Even if the rates are decided by a Board itself for rendering a service or for use of a port property they are required to be approved by this Authority as stipulated in the Statute, as brought out earlier. That being so, the rate fixed by the Chairman of a Board reportedly under the powers delegated by a Board to the Chairman cannot be considered to have statutory effect unless such rate is approved by this Authority. No rate for hire of port dredgers has been prescribed in the Scale of Rates approved by this Authority since there was no proposal from the VPT in this regard. The users are not against paying legitimate charges. Their contention is that the charges levied by the port do not have the backing of the Scale of Rates approved by this Authority.
- (vii). The VPT has reported that the cost for use of port dredger for clearance of spillage to be recovered from the user is calculated on the basis of number of hours the port dredger worked and based on the rates approved by its Chairman. That being so, the charges collected for removal of spillage do not depend upon the nature of cargo spilled into the port waters but depend on the time duration of the use of port dredger for removal of the spilled cargo and the rates determined and approved by the Chairman of the VPT. Therefore, there is no reason why a common rate for use of port dredger for removal of spilled cargo irrespective of the nature of cargo cannot be prescribed in the Scale of Rates of VPT.
- (viii). The VSA has requested to incorporate the procedure for the recovery of the dredging charges on the cargo spillage in the Scale of Rates of VPT. The VPT was advised during the proceedings of the case to fine tune the procedure for the recovery of the dredging charges on the cargo spillage in consultation with the VSA. However, it appears that the matter has still not been concluded at their end. The VPT is also silent on this matter. It is not possible for this Authority to wait indefinitely in this regard.

- (ix). The VPT has made a mention that a sum of ₹1.90 crores towards recovery of dredging cost for clearing spillage was considered on estimate basis in the income estimates for the years 2010-11 to 2012-13 in the last general revision of its Scale of Rates concluded by the Order of February 2011. By capturing the said income estimate in the general revision proposal of the VPT and by not prescribing a rate for the services rendered by port dredger for removal of spillage in the absence of a proposal from the VPT in this regard, the VPT has not been put into any disadvantageous position, since the existing Scale of Rates of VPT has been framed after analysing the overall financial/ cost position of VPT.
- (x). In terms of Clauses 2.17.1 to 2.17.3 of the tariff guidelines of 2005, whenever a specific tariff for a service is not available in the notified Scale of Rates, a Port Trust 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; and, it must be mutually agreed upon by the Port Trust and the concerned users. The Circular issued by the VPT to the Trade about levy of dredging charges for cargo spilled in the sea does not reveal that the levy collected is with the consent of the users. When the port was requested to provide documentary evidence showing that the consent of user was obtained for the said recovery and to show that the action of the VPT of recovery of such charges complies with Clauses 2.17.1 to 2.17.3 of the tariff guidelines of March 2005, the VPT has responded stating that it discussed the issue informally with the Trade and it formulated the procedure at their instance for recovery of cost for clearing spillage. However, the fact remains that the Circular issued by the VPT does not reveal that the levy collected is with the consent of the users.
- (xi). The VPT has not denied that it has not levied charges for removal of spillage. Such levy of charges does not have the approval of this Authority, as required by the Statute. Further, the Circular issued by the VPT also does not show to have the consent of the users for levy of the charges and therefore, the action of the port of recovery of such charges does not comply with Clauses 2.17.1 to 2.17.3 of the tariff guidelines of March 2005.
- (xii). That being so, this Authority is constrained to reiterate its decision recorded in paragraph no.20 (xxxvi) of the Order dated 18 February 2011 with reference to billing by VPT for dredging and spillage charges for cargo. If the VPT intends to prescribe a levy in this regard, the port is advised to file a well analysed proposal in this regard, if it so desires.

15. In the end, and for the reasons given above, and based on a collective application of mind, the decision of this Authority recorded in paragraph no.20 (xxxvi) of the tariff Order dated 18 February 2011 with reference to dredging and spillage charges collected by the VPT, is reiterated.

(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/59/2011 - VPT - Proposal from the Visakhapatnam Port Trust (VPT) relating to the request of VPT to reconsider the decisions in Order No.TAMP/13/2009-VPT dated 18 February 2011 in Para 20 (xxxvi) refraining the port from collecting certain charges viz. Dredging and Spillage Charges.

1.1. A summary of comments received from the users/ user associations and the comments of Visakhapatnam Port Trust (VPT) thereon on the issue relating to Dredging and Spillage charges are given below:

Sl. No.	Comments of users / user associations	Comments of VPT
1.	Visakhapatnam Stevedores Association (VSA)	
(i).	(a). VPT issued circular no. 211 dated 28/ 31 January 2011. (b). It is submitted that the said circular issued by the Chairman exceeds his jurisdiction and not covered under Sec.42 of Major Port Trusts Act, 1963. With regard to the stand of VPT that it is meant only for actual cost incurred by port for clearing the Cargo spillage at the berth, it is submitted that it shall have the backing of some authority either under MPT Act or Scale of Rates approved by TAMP. The association is of the firm opinion that the dredging cost/ spillage cost of cargo is accounted while fixing the tariff and the same is just and proper. However, the contrary view of VPT that the view of Association is not correct since the costs collected for clearing of spillage was not accounted for while fixing cost statement for fixing tariff is totally misconceived. The submission of VPT that the suction dredgers are not suitable alongside the berth structures as such the cargo spilled while loading/ unloading is cleared by grab dredging and it is for this purpose, port dredgers are used for clearing the spilled cargo along side the berth is incorrect and self serving. Even now VPT is not following its circular no. 211. In the past there are innumerable cases where VPT forcibly realized huge amounts allegedly towards costs incurred by it for deploying its dredgers for clearing the spilled cargo alongside the berth due to spillage during loading/ unloading operations of the vessel. In order to avoid multiple billing and also fixation of charges at sweet will and whim of VPT, it is just and proper, the TAMP is requested not only to incorporate the circular no.211 in its order so as to make the procedure mandatory and legally	Remarks on this issue were already furnished, vide VPT's letter dated 26 July 2011. Further, as per Section 29 of Visakhapatnam Port Trust Dock Regulation 1967, <i>"No cargo, goods or substances whatever shall be deposited, thrown or allowed to fall from any vessels, quay or pier in to the port channel or entrances or in to the port. In the vent of any such cargo, goods or substances being so deposited, thrown or allowed to fall as aforesaid, the person, Master Owner or Stevedore in whose charge the cargo, goods or substances was at the time shall be responsible and shall be liable for any loss or damage which may arise in consequence."</i> As provided in Dock Regulations, whenever there are any spillages of cargo, VPT is clearing such cargoes from port waters and the cost is being collected from users. These charges are collected from particular vessels that cause spillage and it is not a common charge for all vessels and charges are in proportion to the time the dredger worked for clearing cargo. Therefore, there could not be a uniform rate for spillage clearing and hence not notified in SOR. Hence a circular No.211 dated 28/31.01.2011 was issued to trade duly mentioning the procedure being adopted for collection of charges for clearing of spillage by port dredgers. In order to maintain depths at notified drafts, port deploys port dredger and basing on the number of shifts the dredger was engaged, charges were proposed. In this connection, it is to reiterate that, as per delegation of powers 2.46 U/S 21 of MPT Act 1963, Chairman is the competent

	enforceable but also the TAMP be pleased to direct VPT to provide the copies of relevant and connected documents to the Association at the end of every week so that the members of the Association will have access to all the material reports. (c). The Association also submits that the TAMP has to fix the spillage charges either by quantity dredged or the time taken by port dredgers to remove the spillage. In either case, the charges are to be fixed and they can be revised as and when change of circumstances occurs. As an additional safeguard the VPT be directed to put the dredged material in the custody of concerned stevedore/ importer/ exporter etc., since it rightly belongs to them. In any case, the Association does not admit the assertion of VPT that as per delegation of powers U/Sec. 21 of the MPT Act, Chairman is competent for "Fixation of hire charges for VPT equipment which is not included in its Scale Of Rates for occasional lending and as such the cost to be recovered from the users for clearing spilled cargos into sea waters, using port dredgers, is being worked out based on the charges fixed and approved by the Chairman under said delegation of powers as valid and enforceable", since the same is not legally tenable. In order to have fairness and transparency, VPT may be directed to fix the charges and satisfy the TAMP on its cost working so that the users/ vessels could also be on firm ground regarding the tariff that may be imposed and the procedure that would be adopted by VPT in this regard. The Association, therefore, prays TAMP to set out the clear procedure by incorporating circular no. 211 with additional safeguards setout hereinbefore by the Association. Accordingly, charges if any, may be levied prospectively from the date of actual implementation of the above circular laying down the procedure for recovery and to stop billing till such time. Further, the monies collected on this count may kindly be refunded as they tantamount to unauthorized billing.	authority for fixation of hire charges to VPT equipment which does not include in the VPT Scale of Rates". Hence, the action taken by VPT is just and reasonable.
(ii).	In view of the above submissions, the association feels that there is no justification/ reason/ cause to review the order of TAMP as requested by VPT. TAMP has to pass necessary orders directing VPT to refund of the amounts illegally and unauthorizedly collected on the specious ground of costs of	As was clarified, the above issue is deterrent to set right the system and act as supportive mechanism for the organization, but not as tariff for any specific services, for which tariff is not available in SOR. Therefore, the tariff guidelines do not come in the way in ensuring discipline for smooth

	dredging and spillage within the time fixed by TAMP with interest at a reasonable rate. If at all TAMP intends to address the issue, it may be pleased to take the submissions of our association and frame the procedure to be followed by VPT for collecting dredging and spillage charges as otherwise the Port users will be put to irreparable loss and immense hardship.	and efficient running of the cargo handling mechanism. Further, to state that, these spillage and penal charges are levied as a deterrent and no consent from users is required for implementing such charges.
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1.2. The comments received from Vizag Seaport Private Limited (VSPL) are summarised below:

- (i). As per Article 3.9 © (i), b,c,d of the License Agreement between VSPL and the VPT, once the Licensee completes the capital dredging and enters the operational phase, the maintenance dredging including under water survey shall have to be carried out by the Licensor i.e., VPT at no cost to the Licensee. The relevant clause is reproduced hereunder for better appreciation:

Quote:

Article 3.9. c) Obligations of the Licensor:

In addition to any of its other obligations in this Agreement, the Licensor shall arrange for and provide the following:

- (i) Marine and Port Services:

The Licensor shall provide/ cause to be provided at no cost to the Licensee the following services:

- (a) Scheduling the entry, berthing and sailing of the vessels, pilotage and towage on a non discriminatory basis subject to priority berthing norms set out in Appendix 18 and the sailing schedule as determined by the Deputy Conservator of the Port depending on individual ship characteristics and tidal conditions;
- (b) Maintenance of the entrance channel draft at – 10.70;
- (c) Waterside safety and safety of navigation;
- (d) Maintenance of the dredged draft alongside the berth at – 10.70 m; Unquote:

- (ii). It may be seen from the above, Clause 3.9 (c) (i) read with 3.9 (c) (i) b,c,d of License Agreement makes it clear that the Licensor shall provide/ cause to be provided the Marine and Port Services which include maintenance of entrance channel draft at – 10.70m and dredged draft along side the berths at – 10.70m and waterside safety and safety of navigation at no cost to the Licensee. Therefore, the VPT as a Licensor shall not levy and recover any charges from VSPL for providing the maintenance dredging along side berths of VSPL and Hydrographic Survey charges, as per License Agreement.
- (iii). Contrary to the above position, VPT was charging different rates ranging from ₹3,69,039/- to ₹4,53,992.50 per shift of 08 hours plus applicable Service Tax towards dredging charges of GHD Sagar Durga without guarantee for any output. If hopper capacity is taken into account, it works out to the exorbitant rate of about ₹1252/- per cu.m. on the higher side where as VPT has been paying between ₹127/- to ₹167/- only per cu.m. to its contractors depending on the Dredger Capacity with guarantee of minimum out put per day for its capital maintenance dredging works.
- (iv). VPT also started debiting the above maintenance dredging charges and Hydrographic Survey Charges to the Deposit Account of VSPL unilaterally, for carrying out the maintenance dredging and hydrographic survey along side the

berths of VSPL. So far, from the year 2004 onwards, a total amount of ₹51.34 lakhs was adjusted from the deposit account of VSPL towards maintenance dredging charges for EQ8 and EQ9 berths and ₹16.84 lakhs upto May 2010, towards Hydrographic Survey Charges.

- (v). From the above, it is evident that the maintenance dredging and hydrographic survey charges levied by VPT are unilateral without any basis and approval of the Authorities concerned. Therefore, the entire amount debited to our Deposit Account towards maintenance dredging charges and hydrographic survey charges till date is liable to be refunded back to VSPL by VPT.

1.3. The VPT has not responded to the comments of VSPL.

2. A joint hearing in this case was held on 17 April 2012 at the VPT premises. The VPT made a power point presentation of its proposal. At the joint hearing, the VPT and the concerned users/ organisation bodies have made the following submissions with regard to Dredging and Spillage:

Visakhapatnam Port Trust

- (i). Section 29 of VPT Dock Regulations provide for recovery of cost for removal of spillages.
- (ii). A transparent procedure has been evolved for recovery of cost of spillage, only after discussions with Trade and a detailed circular has already been issued.
- (iii). We take readings once in 15 days and accordingly measure the quantum of spillage. All the relevant vessels used the berth in this period are required to pay for spillage removal.
- (iv). Atleast 2 shift of dredger time would be needed at each berth to clear spillage which will be around 500 cubic mtr. It works out to ₹1600/- per cubic mtr. Loss of 16 hours of berth time is not compensated.
- (v). When many of PPP projects are commenced in the next 18 months, this issue will not continue.
- (vi). The scheme has produced desired result. The vessels appear to be more responsible now. Our cost recovery was about ₹3 crores in 2009-10 which has come down to ₹38 lakhs in 2011-12.

Visakhapatnam Stevedores' Association

- (i). The problem is acute in West Quay. East Quay has curb wall and spillage is minimum. Please provide curb wall in WQ also.
(VPT : We have already initiated action)
- (ii). The procedure introduced by VPT is totally non transparent. The basis of billing is not at all known to the trade.
- (iii). VPT has issued a Trade Circular no. 211 in January 2011 detailing the procedure. VPT does not follow its own procedure.
- (iv). VPT should delete item 5 of Circular 211. It will be the duty of VPT to inform the Trade about spillage and not the other way around.
- (v). We are not against paying legitimate charges. But port should be in a position to logically pinpoint the party responsible for spillage. It can't penalise all the users, due to its inability to identify the actual vessels responsible for the spillage and the quantum of spillage.