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Tariff Authority for Major Ports

G No. 2

New Delhi, 4 January 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 relating to the request of VPT to reconsider the decisions in Order No.TAMP/13/2009-VPT dated 18 February 2011 relating to the levy of demurrage charges by VPT on cargo not removed from berths after completion of handling operations and refraining the port from collecting Charges for Demurrage to Wagons not approved by TAMP, 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

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Applicant

ORDER

(Passed on this 28th day of September 2012)

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.

2.1. 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 charges for cargoes (b). Charges for damages to wagons and (c). Penal charges for non-clearance of cargo at inner harbour berths. The main points made then by VSA on the said issues are given below:

(i). Dredging and spillage charge:

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.

VSA has protested against such billing on two grounds firstly, 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. Hence, this tantamounts to double recovery. Secondly, 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.

(ii). Charges for damages to wagons and (iii). Penal charges for non clearance of cargo at inner harbour berths:

Bills raised by the VPT levying charges for damage to wagons and demurrage charges on cargo at inner harbour berths appear to be without gazette notification by TAMP.

2.2. VSA enclosed copies of bills in support of their representation and requested this Authority to issue suitable instructions to VPT in this regard.

2.3. During the processing of the general revision proposal itself, 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.

2.4. In this backdrop, this Authority while disposing of 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. The relevant para 20 (xxxvi) of the Order of February 2011 is reproduced below:

"During the processing of the case, the Visakhapatnam Stevedores' Association (VSA) has stated that they have grievance due to some unauthorized billing by VPT with reference to dredging and spillage charges for cargo, charges for damages to wagons and penal charges (demurrage) for non clearance of cargo at inner harbour berths. The SOR of the VPT approved by this Authority in May 2006 prescribes demurrage charges on cargoes not removed from the wharf. The SOR does not prescribe any charges for

spillage of cargo or charges for damage to wagons. The port has despite specific advice not clarified the tariff arrangement under which such levy has been collected by the port. The statute requires the Major Port Trusts / Private Terminal Operators thereat to seek sanction of this Authority for levy of rates which are listed in Section 42 of the Act. The port is advised to refrain from collecting charges on adhoc basis which does not have sanction of this Authority or is not in compliance with clause 2.17.1 to 2.17.3 of the tariff guidelines. If any charges beyond the provision of the Scale of Rates are collected by the port, then it should arrange to refund the same."

2.5. This Authority in para 20(xxxiv) of the general revision Order has approved demurrage charges on cargo not removed from the wharf then applicable for general cargo berth to all the berths as proposed by the port and the approval has been granted prospectively from the date of implementation of the Order.

3.1. 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 do not have the sanction of this Authority.

3.2. 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 points raised by VSA are given below:

(i). **Dredging and spillage charges for cargoes:**

- (a). 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.
- (b). 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.
- (c). 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.
- (d). 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.

(ii). **Charges for damages to wagons:**

TAMP generally notifies rates for cargo and vessel related charges while the Railway tariff in ports is fixed by the Railway Board. Bills raised for recovery of damages to wagons shall not be treated as charge for service rendered by the Board within the purview of Section 42 of the MPT Act. As such, the contention of the VSA that, VPT has no authority to raise bills on account of damage to wagons without gazette notification by TAMP is not correct.

(iii). **Penal charges for non clearance of cargo at inner harbour berths:**

VPT had proposed note no. 6, in Schedule 4.6.2. enabling collection of demurrage charges on cargoes not removed from any berth in the port after completion of discharge from a vessel/ shipment to a vessel and the same was approved by the TAMP.

4. In this context, the port was requested to furnish additional information/ clarifications on a few points 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 is tabulated below:

Sl. No.	Clarifications sought by us	Reply furnished by the port
(a).	Dredging and Spillage charges :	
	(i). The port to explain the basis as 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 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). The port to 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 year wise.	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.
(b).	Recovery of cost of damage to wagons :	
	(i). The port to explain the arrangement between the VPT and the Railways for hire of wagons by the port. The Port to furnish a copy of the agreement, if any, entered with the Railways in this regard.	It is to inform that VPT acts as an agent of the Indian Railways for carrying out the terminal activities of the Railway. In this process, Railway owned wagons are supplied to the various Port users for loading/ unloading of various cargoes by their respective handling agents at the Port Sidings. During the process, sometimes wagons are damaged. For the damage caused by the handling agent to the wagons owned by the Railways, wagon damage charges are being claimed by the Railway and the same are being collected from concerned handling agent by VPT on behalf of Railways and remitted back to the Railways. Thus the wagon damage costs are being collected as per the Railway Board, IRCA notified tariff on behalf of the Railway, since, the E. Co., Railway authorities are supplying the wagons. This does not fall under the purview of TAMP jurisdiction. Hence there should not be any restriction on VPT for collecting the charges.
	(ii). The port to highlight the provision contained in the agreement with the Railways in case of damage caused to wagons. The port to also clarify whether the agreement with the railways stipulate any tariff arrangement for recovery of the cost of damage to wagons from the trade.	
	(iii). The port to explain the methodology adopted to quantify the damage to be recovered from users.	
(c).	Penal charges for non clearance of cargo at inner harbour berths : Clause 2.17.1. to 2.17.3. of 2005 tariff guidelines stipulate that the adhoc rate must be derived based on the existing notified rate for comparable service/ cargo and it must be mutually agreed upon by parties/ the concerned users. The VPT to again clarify the tariff setting arrangement under which adhoc rate was collected by the port and furnish documents to show that it was with the mutual consent of the users and in compliance with clause 2.17.1 to 2.17.3 for the tariff guidelines.	Penal charges for non-clearance of cargo at Inner Harbour berths was introduced with a view to enable the Stevedores/ Cargo Handling Agents to expedite clearance of cargo on the berths, as soon as the vessel working is completed. This will ensure free working by the next berthed vessel without any longer delays and thereby increases the efficiency of cargo handling. Penal charges are raised as deterrent. VPT feels that, neither consent of any one is required for those nor costs involved in recovery of damages needs to be taken into account. Penal charges for non-clearance of cargo at GCB was already in existence, and during the revision of SOR, in place of "GCB at Outer Harbour" the word "any berth" was replaced to avoid waiting time of vessels due to non clearance of cargo on berths. Keeping in view the demand of berths, this condition was amended, which in fact is advantageous for users at large except for the user who delayed the clearance of cargo. The same was already considered by the TAMP in the revised SOR. Since the said penal charges are in existence in respect of GCB, the same was made applicable to all berths on same justifiable criteria. Hence no specific consent is required to be taken from the Trade. The above issues are deterrent to set right the system and act as supportive mechanisms for the organisation and not as a tariff for any specific services, for which tariff is not

		available in the SOR. Therefore, the tariff guidelines do not come in the way in ensuring discipline for smooth and efficient running of the cargo handling mechanism. Further to state that, these spillage and penal charges are levied as a deterrent and VPT feels that TAMP has no jurisdiction on such matters and no consent from users is required for implementing such charges. [Subsequently, the VPT withdrew at the joint hearing held on 17 April 2012 its comments questioning the jurisdiction of the Authority contained in its letter dated 26 July 2012. This was also later confirmed by VPT vide its letter dated 19 May 2012.]
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5. The VSA has subsequently vide its letter dated 29 September 2011 has, referring to the para 20 (xxxvi) of the Order of February 2011, 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.

6. In this backdrop, it was decided to process the request of Visakhapatnam Port Trust (VPT) to reconsider the decisions in Order No.TAMP/13/2009-VPT dated 18 February 2011 in (a). para 20 (xxxiv) giving prospective effect on the modifications proposed by VPT for levy of demurrage charges on cargo not removed from berths after completion of handling operations and (b). para 20 (xxxvi) refraining the port from collecting certain charges viz. dredging and spillage charges and charges for damages to wagons not approved by TAMP.

7. 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. The VPT has responded to the comments of the user/user associations.

8.1. 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 proposal. At the joint hearing, the VPT and the concerned users/ organisation bodies have made their submissions.

8.2. As advised at the joint hearing, the VPT vide our letter dated 20 April 2012 was requested 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.

9.1. 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.

9.2. 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 not 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.

10. 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></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	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”.
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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.																																																								

11. 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>.

12. With reference to totality of the information collected during the processing of this 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. Therefore, this Authority proceeded further with finalisation of the case. With regard to (a) and (b), as recorded in paragraph no. 20 (xxxvi) of the tariff Order of February 2011, since the Scale of Rates of VPT did not prescribe any charges for spillage of cargo or charges for damage to wagons, VPT was advised to refrain from collecting charges on adhoc basis which have not been approved or is not in compliance with clause 2.17.1 to 2.17.3 of the tariff guidelines and the port was also advised to refund the charges, if any, collected beyond the provision of the Scale of Rates. With regard to (c), as recorded in paragraph no. 20 (xxxiv) of the tariff Order of February 2011, the port had sought approval for retrospective application of rates from 20 June 2010. However, the demurrage charges on cargo not removed from the wharf then applicable for general cargo berth was made applicable to all the berths prospectively.

- (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 2011 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 now referred by the VPT, this Authority has decided to pass an Order separately in due course of time to dispose of the issue relating to the Dredging and spillage charges on cargo. This Order now proceeds to dispose of the other two issues relating to Charges for damages to wagons and Penal charges for non-clearance of cargo at inner harbour berths.
- (iv). Charges for damages to wagons:
 - (a). The VPT has reported during the current proceedings of the case that Railways charge the VPT for the damages caused to their wagons. The VPT in turn collects the charges from the concerned users at the rates fixed by the Railways.
 - (b). It appears that the VPT has entered into an agreement with the Railways for carrying out the terminal activities of the Railways. Despite a specific request to furnish a copy of the agreement entered by it with the Railways, the VPT has not furnished the same. In the absence of a copy of such an agreement, the arrangement between the VPT and the Railways for hire of wagons, the provision, if any, contained in the agreement in case of damages caused to wagons, whether the agreement stipulates any tariff arrangement for recovery of the cost of damages to wagons from the users, and the methodology adopted to quantify the damage to be recovered from the users could not be ascertained.
 - (c). Nevertheless, the position reported by the VPT that the recovery of cost of damages to wagons is done as per the tariff notified by the Railways cannot be brushed aside. With reference to the mention made by the VSA that bills raised by VPT towards charges for damage to wagons are not notified by this Authority, it is relevant here to mention that the Port Railway charges are not approved by this Authority as recorded in Order dated 27 March 2009 in Case No.TAMP/60/2005-PPT. In fact, the Railway charges sanctioned by the Railway Board incorporated in the

then existing Scale of Rates of the Paradip Port Trust (PPT) were de-notified as proposed by the PPT from its Scale of Rates vide Order dated 27 March 2009 passed by this Authority in the case of PPT. Therefore, the question of prescription of rates sanctioned by Railways in the Scale of Rates of VPT approved by this Authority does not arise.

- (d). It appears that the users have some grievances with regard to the procedure adopted for recovery of damages caused to the wagons. Since the levy of charges by VPT towards damages caused to the wagons from the users is beyond the regulatory purview of this Authority, this Authority is not in a position to look into the grievances of the users. The users may take up the procedural issues with the concerned Railway Authorities, if their exercise with the VPT in this regard does not yield desired result.
- (e). Relying upon the position reported by VPT that recovery of cost of damages to wagons by VPT is as per the tariff notified by the Railways and keeping in view the position that Port Railway charges are not approved by this Authority, the matter relating to levy of charges by VPT for damage to wagons recorded in the paragraph no.20(xxxvi) of the Order dated 18 February 2011 is kept out of the scope of the said paragraph no.20(xxxvi) of the Order dated 18 February 2011.
- (v). Penal charges for non-clearance of cargo at inner harbour berths:
 - (a). Clauses 2.17.1. to 2.17.3. of 2005 tariff guidelines stipulate that the adhoc rate must be derived based on the existing notified rate for comparable service/ cargo and it must be mutually agreed upon by parties/ the concerned users.

The VPT has sought to argue that charges levied for non-clearance of cargo at inner harbour berths are in the nature of penal charges and therefore no consent of the users for levy of such penal charges is required to be taken. It has further stated that the penal charges is not a tariff item for any specific services and therefore, the tariff guidelines do not come in the way of ensuring discipline for smooth and efficient running of the cargo handling mechanism. Further, inspite of a specific request to clarify the tariff setting arrangement under which adhoc rate was collected by the port and to furnish documents to show that it was with the mutual consent of the users and in compliance with Clauses 2.17.1 to 2.17.3 of the tariff guidelines, the VPT has not furnished documents to show that the rate during the interim period was with the mutual consent of the users and in compliance with clause 2.17.1 to 2.17.3 for the tariff guidelines.

In this regard, it has to be noted that the tariff guidelines of March 2005 do not exclude the prescription of the penal charges from the regulatory purview of this Authority leaving it to the discretion of the Major Port Trusts.

- (b). This Authority reiterates the decision already taken as recorded in paragraph no. 20(xxxiv) of the tariff Order of February 2011, in this regard.

13. In the end, and for the reasons given above, and based on a collective application of mind, the matter relating to levy of charges by VPT for damage to wagons is kept out of the scope of the paragraph no.20(xxxvi) of the tariff Order dated 18 February 2011. With regard to the levy of penal charges for non-clearance of cargo, the decision already taken as recorded at paragraph no.20(xxxiv) of the Order of February 2011 is reiterated. As regards the levy of charges for spillage of cargo, the matter will be disposed of in due course of time by a separate Order.

(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 (A). Para 20 (xxxiv) giving prospective effect on the modifications proposed by VPT for levy of demurrage charges on cargo not removed from berths after completion of handling operations and (B). Para 20 (xxxvi) refraining the port from collecting certain charges viz. Dredging and Spillage Charges and Charges for Demurrage to Wagons not approved by TAMP.

A summary of comments received from the users/ user associations and the comments of Visakhapatnam Port Trust (VPT) thereon are given below:

Sl. No.	Comments of users / user associations	Comments of VPT
1.	Visakhapatnam Stevedores Association (VSA)	
(i).	<u>Penal charges for non clearance of cargo at inner harbour berths.</u>	
	(a). In so far as penal charges for non clearance of cargo at inner harbour berths within the allowed time and for over stayal, the TAMP at paragraph 20(xxxiv) of Order no. TAMP/13/2009-VPT dated 18 February 2011 has approved the proposal of VPT to apply the same charges to all the berths as in the case of General Cargo Berth (GCB) in outer harbour. However TAMP has approved the levy of charges with prospective effect from the date of implementation of order, which was notified in Gazette on 30.3.2011. Hence the issue is no more <i>Res integra</i> . Although our association is not satisfied with the said working arrangement we do not make it an issue for the present. In this regard, the association has no objection for implementation of order w.e.f. 31.3.2011. The VPT is dissatisfied as seen from para 3 of its letter dated 25 April 2011 and para-2(c) of its letter dated 26 July 2011. However, it is conspicuously silent on this aspect in its letter dated 21 June 2011.	The need to levy penal charges is to enable the Stevedores/ Cargo Handling Agents to expedite clearance of Cargo on the berths as soon as the vessel working is completed. The said working arrangement is a deterrent which will ensure the next berthed vessel to work freely without any longer delays thereby increasing the efficiency of Cargo Handling Operations. The statement of the Association, that the levy of demurrages for leaving the cargo beyond the stipulated period at the rate and as per procedure approved for General Cargo Berth was wholly inapplicable to other berths for the reasons that the same was resorted to by VPT without any notice and without it having any authority, is far beyond the truth since the TAMP itself in the Tariff Guidelines 2005 had provided under Clauses 2.17.2 & 2.17.4 for levy of a proposed rate on an adhoc basis till rate is finally notified. The same was also approved by TAMP in the revised SOR 2011. In the interim period VPT had imposed charges for early clearance of cargo only.
	(b). In view of VPT's submission, the proposal of the port to collect demurrage charges on cargoes not removed from any berth in the port after completion of discharge from a vessel or shipment to a vessel and the same was approved by the TAMP in the general revision Order of VPT. There was a broad agreement between the Association and VPT in respect of this issue, since VPT was also satisfied with the arrangement as set out in the general revision Order of VPT. But it appears that VPT has entertained new idea of either realizing the allegedly past dues or to justify	VPT never made any realization by resorting to coercive methods since it is a public authority under Major Port Trusts Act, 1963 and every action of it is derived from a statute in the general interest of the Public/ Trade. However, no separate Notice other than what is stipulated by the TAMP for calculation of time is required to be issued. Also, it is the responsibility of the Stevedore/ Handling Agent to expedite the

	the realizations already made by it under this head. Precisely for this reason, that although VPT had not dealt with this aspect in its letter dated 21 June 2011, it is now making an attempt to resuscitate the issue in its letter dated 26 July 2011 vide paragraph no. 2(c).	clearance of cargo from the wharf after completion of loading/ unloading operations and hence, the statement that VPT had been allowing the cargo to lay is inappropriate. VPT had no intention to make profit without rendering the service and the said system/ procedure had been introduced for the overall benefit of trade and also to inculcate discipline among the handling agents, which would improve the overall performance of the port operations. Most of the handling agents take more than 24 hrs. to clear the cargo from the wharf and a majority of these agents do not deploy adequate number of Dumpers and Pay Loaders to ensure matching evacuation from the wharf, which adversely effect the vessels performance. Hence the action taken by VPT is appropriate.
	(c). As was explained by our Association, the levy of demurrage for leaving the cargo beyond the stipulated period at the rate and as per procedure approved for general cargo berth was wholly inapplicable to other berths since the same was resorted to by VPT without any notice and without it being having any authority. Had VPT possessed the said powers there would not have been any necessity for it to seek a specific order in this regard in its seeking general revision proposal. Hence VPT may be directed to implement the order prospectively. In so far as the realization already made by VPT resorting to coercive methods, the same are to be refunded or adjusted with interest since VPT collected the same without authority of law.	
	(d). The Association humbly prays to TAMP to direct the VPT to strictly adhere to the procedure of issuance of notice at the earliest and calculation of time for removal of the cargo from the berth for the shortest period. Otherwise, VPT has been allowing the cargo to lie and it is only after the next vessel is berthed it is haphazardly clearing the left over Cargo and charging the Agent of the previous vessel for the longer period. as a result VPT is making profit without rendering the service thereby causing inconvenience to the next vessel berthed at the Berth/ wharf and over charging the agent of the previous vessel. Issuance of the notice at the earliest and removal of the cargo within the shortest possible time leads to transparency and fair accounting practice. In this view of the matter, it is not necessary to modify paragraph- 20 (xxxiv) of order. The request of VPT to give retrospective effect is legally unsound and untenable.	
	(e). The modification that is required is to issue direction to VPT to give notice to the Vessel/ Agent who left the cargo either at the berth/ wharf at the earliest and to deploy the machinery and complete the removal within the shortest period.	
(ii).	Dredging and Spillage charges for cargoes	
	(a). VPT issued circular no. 211 dated 28/ 31 January 2011.	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</i>
	(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 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.	<i>pier in to the port channel or entrances or in to he 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 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.
(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.	
(iii).	Charges for damages to wagons	
	(a). This issue was raised by the Association in their letter dated 22 December 2010 to TAMP. Although the same was adverted to at paragraph-20 (xxxvi) of the VPT Order, TAMP had not issued any specific directive to VPT to not collect any charges under this head; TAMP has merely advised VPT to refrain from collecting charges on adhoc basis, which does not have sanction of this authority (TAMP) or is not in compliance with clauses 2.17.1 to 2.17.3 of the Tariff guidelines, if any charges beyond the scale of rates collected by the VPT then it should arrange to refund the same. Although, the VPT has realized huge sums from various stevedores/ agents, who are members of the Association, VPT has not refunded the amount inspite of their specific request and despite the TAMP's directive.	Detailed remarks have already been furnished to TAMP vide letter dated 26 July 2011. However, as a supplement, it is stated that the existing procedure of collection of damage charges in respect of Railway Wagons had been in existence since long past with the consent of all the Trade, and it is not appropriate and justifiable to comment VPT's remarks as evasive/ lopsided and causing grave loss to the users. The statement that the stand of VPT is indicative of its abdication of responsibility is grave misuse of the association's privileges in dealing with a Statutory Authority like TAMP. It is not the subject matter of the Association to comment on the obligations of VPT as an Agent to the Trunk Railways. Abiding to certain Government Procedures and Rules, the members of the Stevedoring Association or any other Rail User indent for the Wagons and if any party is aggrieved by the issue of damages and deficiencies, they may stop indenting or handling Railway Wagons. The agreement entered into between VPT and Trunk Railways is binding on the Trade operated at VPT indirectly. Long back, a procedure was set out for identification of the damages and the same is being continued and defaulted parties are being appropriately and reasonably levied in order to restrict and compensate loss to the public property such as the rolling stock of the Railways.
	(b). It is submitted that the Traffic Department, VPT held a meeting on 14.7.2011 at the request of our Association, wherein the officials of Railways were supposed to participate. Our association had submitted points for discussion vide letter dated 8 July 2011 at the meeting to be held on 14.7.2011. Although VPT realized the necessity to stream line the procedure for examination of rakes as per request of our association and also suitable procedure for reduction in damages to wagons and to workout proper billing procedure, so far no consensus has emerged. In the premise VPT's assertion that it is acting as an agent of Indian Railways for carrying out terminal activities of Railway and its comments on	

	this subject at paragraph-2(b) vide letter dated 26 July 2011 are evasive, lopsided and causing grave loss to the users running into crores. The stand of VPT is indicative of its abdication of responsibility. VPT cannot act as agent and coercively realize the damages without any pre or post decisional hearing or notice. It is also pertinent to note that in countless instances, evidence of which will be submitted at the time of oral hearing the Railways was supplying damaged wagons and there is no method to check the same. Having supplied the damaged wagons, the damages are being collected from both users who loaded as well as unloaded in the same turn/sequence, the same wagons are recycled and damages are being collected more than once. In some cases cost of damaged wagons was collected number of time for the very same wagons which were allegedly damaged. There is no scale or tariff to assess the damages and as evident from the recycling of the wagons the amount collected from the users is not being utilized for repairs or restoration of wagons. In order to avoid repetition, the submissions of the Association vide letter dated 11 March 2011 may be taken into consideration in addition to the material evidence to be submitted at the time of oral hearing.	
	(c). The assertion of VPT that the wagon damage costs are being collected by Railway Board, IRCA notified tariff on behalf of Railway, since the E.Co., Railway authorities are supplying the wagons, as such it does not fall under the TAMP jurisdiction is totally incorrect. Assuming without admitting for a moment that VPT is acting as an agent for Railway, it being a statutory authority is bound to set out a procedure to levy damages in this regard and provide opportunity of hearing before levying damages/ realizing as dues by resorting to coercive methods of suspension of agency/license etc.	
	(d). In the premises VPT may be directed to reimburse to the users i.e. members of Association of all unauthorized collection as the same was resorted by coercive methods and without authorization of law. Association respectfully submits that it is settled law that one party to contract cannot, without there being consent of other party decide the incidence and quantification of damages.	
	(e). In so far as the future operations are concerned the association respectfully submits that VPT may be directed to come out with a specific time bound procedure in league with E.Co., railway authorities for inspection of the wagons before they are	

	deployed either for loading or unloading, post loading or unloading, for issuance notice within a specified period to the user, to provide opportunity of hearing placing objections etc.	
	(f). As stated above and for reasons as stated above, VPT may kindly be asked/ directed to stop billing on this count till an acceptable procedure is put into place to clearly establish beyond any doubt the persons/parties responsible for the alleged damages to wagons and to refund the amounts collected till now through arbitrary billing without authorization.	
(iv).	In view of the above submissions, the association feels that there is no justification/ reason/ cause to review the order TAMP vide ref. no.1 as requested by VPT. TAMP has to pass necessary orders directing VPT to refund of the amounts illegally and unauthorizedly collected on the specious grounds (a) costs of dredging and spillage charges (b) recovery cost of damage to wagons to the respective users within the time fixed by TAMP with interest at a reasonable rate. If at all TAMP intends to address these two questions, 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 and also for recovery of costs of damage to wagons, as otherwise the Port users will be put to irreparable loss and immense hardship.	As was clarified, the above issues are deterrents 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 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.
2.	Vizag Seaport Private Limited	
(i).	Collection of charges for alleged wagon damages by VPT:	VPT has not commented on the points made by VSPL.
	(a). Bills are being raised on us on account of purported damages caused to wagons during the process of unloading or loading at VSPL sidings namely EQ8 siding and EQ9 siding. The bill merely states a wagon number and amount towards cost of repair. The bill does not state which is the part damaged and nature of repair that has been carried out etc.	
	(b). Assuming without conceding that it is found that certain part of the wagon has been damaged, it is absolutely not clear where exactly the damage has occurred and who are accountable or responsible for the damage due to the simple reason that no inspection of rakes takes place at the time of placement of rakes at our siding.	
	(c). As per the existing system in vogue, the organisation responsible for unloading and or loading of wagons is not made a party for any kind of inspection of the rakes while the rakes are placed, handled or drawn out from a particular siding. Hence, the assessment of damages done as per the present system is one sided and hence unilateral.	

	(d). On EQ8 siding, wagons are mechanically loaded through Bulk Material Handling System which does not involve use of equipment like excavators or loaders etc. Therefore, damaging of wagons by us at EQ8 siding is completely ruled out and the same can be easily established by observing the operations at our terminal. In unloading operations on EQ9 siding, rakes are manually handled by deployment of labour and no machine operation is involved. Considering the nature of damages mentioned in the demand notices pertaining to EQ9 siding such as coupling bar broken, floor deficient etc., the damages are apparently not to be attributable to VSPL. Hence, there is hardly any scope for damages of wagons on EQ8 siding as well as in unloading operations at EQ9 siding of VSPL.	
	(e). Further, damage charges are levied even on the declared sick wagons, though they were not used, by which it is clearly evident that the damages are levied without careful attention and examination.	
	(f). No inspection is carried out of the rakes which were received from other sidings prior to their placement at VSPL sidings. VSPL is also never made a party in any kind of inspection either at the time of placement of wagons or after drawn out of the same from VSPL Terminal. The inspection of rakes drawn out from VSPL Terminal was presumably carried out at R&D yard in the absence of VSPL Representative and basis on the one sided inspection reports, the debits are raised to our account on the assumption that all damages are caused by VSPL.	
	(g). From the above, it is seen that the methodology adopted by VPT Railways on imposing charges on account of alleged damages to wagons is found to be arbitrary and not based on facts.	
	(h). Huge amounts to the tune of about ₹42,00,272/- were debited to our Deposit Account No.671/213, without our consent and any scope for explanation from us, towards alleged damages to Railway Wagons in VSPL Railway Siding from June, 2008 to December, 2010.	
	(i). We have reviewed the debits raised on our account. In most of the instances, we feel that those damages can no way be caused by us and VSPL is made responsible for the damages caused by other agencies who have unloaded the rakes in other sidings of VPT. Therefore, we have informed VPT that there is an urgent need for introducing a suitable methodology for inspection of the rakes at the time of placement to fix up the responsibility on the	

	Agency responsible for the damages.	
	(j). After the subject matter was discussed in a meeting held on 14 July 2011 in VPT chaired by Dy. Chairman when Sr. DOM, Sr. DME of East Coast Railway and Representatives of Visakha Stevedoring Association were present, we have appointed two Railway Retired TXRs in our Terminal to inspect the wagons placed at our EQ8 and EQ9 sidings, upon placement and before being drawn out on completion in our Terminal. The two inspection reports of TXRs one each upon placement and before drawing out are being sent to T.M., VPT, regularly.	
	(k). In view of above factual position, it has requested VPT to withdraw the demand notices and pay back our legitimate amount of ₹42,00,272/- and not to raise any further demand notices for payment of any alleged wagon damage charges, until fair and reasonable opportunity is provided to VSPL to take part in the joint inspection of rakes at the time of placement and drawn out of wagons in/ from VSPL Terminal. Response from VPT is still awaited.	
	(l). In the absence of any guidelines from TAMP, VPT cannot levy or collect any damages from VSPL on account of wagon damages, without evidencing the nature and occurrence of damage by VSPL.	
(ii).	Collection of charges for dredging by VPT:	
	(a). 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:	
	(b). 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.	
	(c). 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.	
	(d). 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.	
	(e). 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.	

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:

(i). **Penalty for non clearance**

Visakhapatnam Port Trust

- (i). Cargo was found not cleared from a berth even after the next vessel was berthed. It, therefore, upsets the cargo operation and forces the next vessel to idle.
- (ii). TAMP has already approved penal rates at GCB under similar conditions. Since the position was same, we have extended the approved provision to other berths also.
- (iii). We withdraw our comments questioning the jurisdiction of TAMP contained in our letter dated 26 July 2011.
- (iv). Most of the agents clear cargo in time by deploying adequate resources. But, some operators may be casual and the penal provision is directed towards them.

Visakhapatnam Stevedores' Association

- (i). Only when we objected, VPT had applied to TAMP for approval. For the period during which the charges were levied without TAMP approval, refund should be effected.
- (ii). Evacuation of cargo is delayed due to poor infrastructure facilities and not due to the casualness of agents.

(ii). **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.

(iii). Damages to railway wagon

Visakhapatnam Port Trust

- (i). Railways charge us for the damages caused to their wagons. We in turn collect from the concerned users at the rates fixed by the Railways.
- (ii). At the interchange point, thorough examination is conducted by VPT staff and IRCA. The mechanism to detect damages, which is already in place, is sound.

Visakhapatnam Stevedores' Association

- (i). As far as we are concerned, the demand is made by the Port. Therefore, the issue involved is tariff in nature and the decision of TAMP will be final.
- (ii). Sometimes, bills are raised after 9 months or 1 year. We don't get an opportunity to understand the nature and extent damages caused by us, for which we are required to pay huge amount.
