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Tariff Authority for Major Ports

G No. 218

New Delhi, 5 October 2012

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from the Visakhapatnam Port Trust to review the Hire Charge fixed vide Order No.TAMP/56/2008-VPT dated 16 June 2010 for the 100 Tonne Harbour Mobile Crane as in the Order appended hereto.

(T. S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/16/2012 - VPT

Visakhapatnam Port Trust

Applicant

ORDER

(Passed on this 28th day of September 2012)

This case relates to a proposal received from the Visakhapatnam Port Trust (VPT) for review of the hire charge of 100 Tonnes capacity Harbour Mobile Cranes (HMC).

2.1. This Authority had passed an Order dated 16 June 2010 disposing the proposal filed by VPT for fixation of hire charge for 100 tonne HMC. The Order had been notified in the Gazette on 20 July 2010 vide Gazette No.180.

2.2. In this regard, the Visakhapatnam Stevedores' Association (VSA) vide its letter dated 22 December 2010 contended that the performance linked tariff prescribed for hire of HMC is proving to be disincentive as the tariff goes up when higher outputs are achieved. The VSA requested to publish a fresh order which would help in improving productivity by offering lower rates for higher outputs. The reference of VSA was forwarded to VPT with a request to examine the submission made by VSA and furnish its views with necessary suggestion/ recommendations.

2.3. In the meanwhile, the VPT vide letter dated 28 December 2010 forwarded a copy of the letter of South India Corporation Limited (SICL), wherein SICL stated that it has to pay penalty for achieving higher productivity.

3.1. With regard to the representations made by VSA and SICL, the VPT vide its letters dated 9 February 2011, 11 November 2011 and 6 March 2012 has responded. The response of VPT is summarised below:

- (i). The VPT has taken on hire 2 nos. of 100 Tonne HMC for a period of 5 years. The port pays hire charges to the hirer firm and collects handling charges from the users as fixed by TAMP. The following are the conditions stipulated for deployment of HMCs on hiring basis:
 - (a). Hire charges will be paid on per tonne basis excluding applicable taxes.
 - (b). Ensured throughput should not be less than 10,000 Tonnes per day per crane.
 - (c). Percentage of availability of the crane should be 95% i.e. 21 hours a day.
 - (d). Hire charges will be paid for minimum guaranteed traffic of 1 MT per crane per annum.
 - (e). Hire charges payable by VPT is ₹29.75 per tonne for first 3 years and ₹30.75 per tonne for 4th year and ₹31.75 per tonne for 5th year.
 - (f). Cargoes to be handled are General cargo/ Bulk/ Break Bulk.
- (ii). Based on the above conditionalities, VPT had submitted a proposal to fix per day output for bulk cargo at 500 tonnes per hour and for break bulk cargo at 200 tonnes per hour and for a per tonne handling rate to be collected from the users at ₹39.75 per tonne.
- (iii). The Authority, however, fixed the tariff considering the handling rate at 12500 tonne per day for dry bulk cargo, 6000 tonnes per day for break bulk cargo and others at 3750 tonnes per day, based on the conditionalities prescribed in the Paradip Port Trust (PPT) and V.O. Chidambaranar Port Trust (VOCPT).

- (iv). In case of PPT and VOCPT where performance linked tariff are prescribed for hire of HMC, the equipment is hired by the service providers as a common user facility whereas in case of VPT, the port has taken the cranes on hire and provides the service.
- (v). Further, the tariff is fixed in a manner where a better performer is burdened with higher tariff and low performer is enjoying lesser rate – which ultimately results in achieving lower outputs.
- (vi). The cranes started operating with effect from 12 January 2009 and the daily average output was recorded at 18000 tonnes per day for handling thermal coal. However, after implementation of TAMP order dated 16 June 2010, the average daily output is reduced from 18000 tonnes per day to 12500 tonnes per day, because of a higher rate for a higher output. Thus, the average rate is working out to less than ₹30 per tonne.
- (vii). The users are managing the daily output levels below 12500 tonnes per day to avoid higher handling charges which is affecting the performance of the cranes and also leading to congestion at berths due to stayal of vessels.
- (viii). Further, the hire rate of ₹29.75 per tonne is payable by VPT upto 11 January 2012 till end of 3rd year and after that VPT has to pay ₹30.75 per tonne, resulting in deficit to VPT when compared to with the rate fixed by TAMP upto 31 March 2013.

3.2. In view of the above, the VPT has requested to review the tariff fixed and to issue appropriate orders.

4. In accordance with the consultative procedure prescribed, a copy of VSA letter dated 22 December 2010 alongwith a copy each of the VPT letters dated 9 February 2011, 11 November 2011 and 6 March 2012 was forwarded to users/ user organisations seeking their comments. The comments received from users/ user organisations were forwarded to VPT as feedback information. The VPT has not responded to the comments of the users, till the finalization of the case.

5.1. A joint hearing in this case was held on 17 April 2012 at the VPT premises. The VPT made a powerpoint presentation of its proposal. At the joint hearing, the VPT and the concerned users/ organisation bodies have made their submissions.

5.2. At the joint hearing, VPT desired not only the discontinuance of performance linked tariff scheme for MHC but also requested for revision of the base rate for hire of MHC. As agreed at the joint hearing, the VPT was requested to forward its revised proposal for revision of the base rate for hire of Mobile Harbour Crane. The VPT was also requested to simultaneously forward its revised proposal to the concerned users for their comments.

6. In response, the VPT vide its letter dated 19 May 2012 has made the following submissions:

- (i). The meetings were held with the port users on 27 April 2012 and 7 May 2012 and consensus has been arrived at in respect of HMC for the 4th and 5th years. The VPT has furnished a copy of the minutes of the final meeting held on 7 May 2012. The following is recorded in the minutes:

“With regard to fixation of handling charges for HMC, the trade stated that the proposed rates of Rs.42.45ps per ton for the 4th year i.e., from 11.1.2012 to 10.1.2013 and Rs.43.75 per ton for the 5th year i.e., from 11.1.2013 to 10.1.2014 is on high side and requested to work out a reasonable rate duly removing the staff component from the costing. FA&CAO stated that the request of the trade had been considered and the costing re-worked. He stated that the base rate as per the present HMC rates notified in the SOR is Rs.33.23 ps. Adding Rs.1/- for the 4th year and another Rs.1/- for the 5th year to this base rate will put the handling rates at Rs.34.23 and Rs.35.23 for the 4th and 5th years respectively. The Trade agreed for the rates proposed by FA&CAO.”

(ii). VSA vide its letter dated 9 May 2012 has conveyed their consent to continue the approved base rate of TAMP as communicated vide letter No.TAMP/56/2008-VPT dated 16 June 2010 without any slabs and also to enhance the base rate by ₹1/- per MT in each year for the 4th and 5th years.

(iii). In this connection, it is stated that as per conditions of contract agreement entered with M/s.ABG Infralogistics Ltd., VPT has to pay the hire charges for the HMC on per tonne basis as follows:

For 1 to 3 years ₹29.75 per tonne i.e. from 28.1.2009 to 27.1.2012
 For 4th year ₹30.75 per tonne i.e. from 28.1.2012 to 27.1.2013
 For 5th year ₹31.75 per tonne i.e. from 28.1.2013 to 27.1.2014

(iv). TAMP has, however, fixed tariff on slab rate system prescribing a base rate for each type of cargo i.e. dry bulk, break bulk and others linked with daily crane performance. The base rates as fixed by TAMP vide letter No.TAMP/56/2008-VPT dated 16 June 2010 are as follows:

Average tonnage	Cargo type	Rate per tonne in ₹
12500	Dry Bulk	33.23
6000	Break Bulk	69.24
3750	Others	110.85

(v). Since, VPT has to pay the increased rate of ₹1/- per MT in each year for 4th and 5th year, Trade was appraised with the position and the same was agreed to. Hence, the proposed tariff as was agreed to by the trade is furnished below and is to be considered for approval by TAMP as follows:

Section-5 - Charges for hire of craft/ equipment

5.1.3:

Cargo type	Rate per tonne in ₹ from 26.1.2012 to 27.1.2013	Rate per tonne in ₹ from 26.1.2013 to 27.1.2014
Dry Bulk	34.23	35.23
Break Bulk	70.24	71.24
Others	111.85	112.85

The above rates are on per tonne basis without any relevance with output or slab rate.

7. Thereafter, the VSA vide its letter dated 29 May 2012 has forwarded a copy of its letter dated 9 May 2012 addressed to VPT informing the minutes of the meeting held on 27 April 2012 and 7 May 2012 with regard to the rate for HMC. The points made by VSA to VPT in its letter dated 9 May 2012 are as follows:

(i). Meeting dated 27.4.2012:

An amount of ₹7.84 is included in the costing by VPT towards the cost of deployment of 11 personnel. On enquiry by Trade, it was confirmed by VPT that no new personnel were appointed for this purpose. Trade requested for deleting this element of cost from the cost break-up for HMC hire charges as the expenditure on these people is already being recovered by VPT through other items in the Scale of Rates and as it would tantamount to double recovery of same expenditure. VPT promised to examine the issue and get back. All other elements of costing were acceptable to Trade Members.

(ii). Meeting dated 7 May 2012:

VPT has agreed to reduce the cost pertaining to deployment of employees for HMC supervision. As such, they have agreed to offer the crane @ ₹33.23 per MT on consolidated rate basis irrespective of rate of discharge/ loading. Further, there will be an increase of ₹1/- per MT after completion of one year. The Trade has accepted the proposal of VPT.

8. 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>

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

- (i). The Visakhapatnam Port Trust (VPT) has hired from a private operator reportedly based on a competitive tender basis, two nos. of Harbour Mobile Cranes (HMCs) of 100 tonne capacity each for a period of five years to handle dry bulk and break bulk cargo. The arrangement envisaged by the VPT is not granting direct authorization to a private operator to operate the cranes. The port has hired the cranes and it will be responsible to the users for provision of services and accordingly, will levy charges from them for the services availed. This Authority vide tariff Order no.TAMP/56/2008-VPT dated 16 June 2010 fixed tariff for the use of HMC. In the Order of June 2010, the base rate for handling dry bulk cargo, steel and bagged cargo and other cargo with the use of HMC had been determined based on the normative handling rate of the respective cargo following the approach adopted at Paradip Port Trust (PPT), V.O. Chidambaranar Port Trust (VOCPT) and New Mangalore Port Trust (NMPT). Accordingly, the base rates of ₹33.23 per MT for dry bulk cargo, ₹69.24 per MT for break bulk cargo and ₹110.85 per MT for Other cargo were fixed.

Further, performance linked tariff for the use of HMC at VPT was fixed in order to encourage the port to maintain higher efficiency level to enhance the port's returns due to higher rates and also to benefit the users due to faster turnaround of vessel. To arrive at the performance linked tariff structure, a reward of 5% by way of increment in the base rate if performance achieved is 1000 tonnes higher than the benchmark level and a disincentive by way of reduction in the base rate by 5% if performance achieved is 1000 tonnes lower than the benchmark, was prescribed.

- (ii). As reported by VPT, since the slab wise structure approved for the use of HMC prescribes a higher rate (when compared with the base rate) for a higher productivity level, the users are maintaining the productivity at the base level to avoid payment of higher rates. This position is leading to lower productivity and is resulting in congestion in the port, as reported by the Port. Since the performance linked tariff for the use of the HMC operated by the VPT is proving to be disincentive, the VPT as well as the users have mooted the proposal in reference requesting for review of the performance linked tariff of HMC fixed in June 2010 and prescribe a single rate for handling dry bulk, break bulk and other cargo irrespective of rate of discharge/ loading of cargo.
- (iii). As rightly brought out by VPT, it may be recalled that the VPT in its proposal of December 2008 which culminated in the tariff Order of June 2010 had proposed a single rate for handling each category of dry bulk, break bulk and other cargo. However, this Authority, in line with the approach adopted in respect of other major ports like PPT, VOCPT and NMPT and for the reasons explained in the tariff Order of June 2010, prescribed performance linked tariff for the use of HMC at VPT also.

- (iv). It is relevant to mention here that in respect of other major ports where tariff for the use of HMC has been fixed, the HMC is being operated by an authorized service provider, whereas in case of VPT, the VPT itself renders the service. Now, given the different situation as brought out by VPT as compared to the position obtaining at other ports viz., PPT, VOCPT and NMPT in its current proposal, it is felt necessary to address the concerns of the VPT.
- (v). The performance linked tariff fixed vide Order of June 2010 has led to drop in the daily output at VPT. Reportedly, the average daily output of dry bulk cargo, which was 18000 tonnes per day prior to implementation of Order of June 2010 has dropped to 12500 tonnes per day after implementation of Order of June 2010. Since every tonne of cargo handled beyond 12500 tonnes attracts a higher handling rate, as per tariff Order of June 2010, it appears that the users restrict the output level to below the level of 12500 tonnes per day. This has got the cascading effect of under-utilisation of hired cranes, overstay of the vessels at berths and consequent congestion at the berths. The performance linked tariff structure prescribed in the Order of June 2010 is affecting not only the daily output of cargo but also the vessel turnaround time. One of the objectives of prescription of performance linked tariff in the tariff Order of June 2010 was to benefit the users due to faster turnaround of vessel, which is not seen to have been achieved at VPT. That being so, this Authority is inclined to review the performance linked tariff prescribed in the case of VPT vide Order of June 2010 and prescribe a single rate for each category of cargo.
- (vi). The users initially, requested for prescription of lower rates for higher productivity. However, we do not have the benefit of the views of the VPT in this regard. The VPT has maintained the stand of prescription of a single rate irrespective of the level of productivity. It is noteworthy that the users, though, initially requested for prescription of rates linking to productivity levels, have subsequently endorsed the proposal of the port for prescription of single rates.
- (vii). There is no objection from the VPT for the base rates prescribed in the Order of June 2010 for the benchmark level of productivity for dry bulk, break bulk and other cargo. The present proposal of the port is to prescribe single base rate with a graded increase of ₹1/- per MT over the base rate prescribed in the June 2010 Order for the next two years commencing from 26 January 2012 and upto 27 January 2014.

In this regard, it is noteworthy that the tariff for the use of HMC fixed vide the tariff Order of June 2010 was based on standard capacity and normative cost of operating the HMC. The tariff was not fixed with reference to any individual service provider. Therefore, it may not be correct to increase the base rate fixed vide the tariff Order of June 2010 to accommodate the increase in the rate agreed by the VPT with the hirer of HMC.

Further, the tariff Order of June 2010 was notified in the Gazette of India on 20 July 2010 and the Order has come into force with effect from 4 August 2010, after expiry of 15 days from the date of notification and shall remain valid for a period of three years i.e. upto 3 August 2013. Therefore, the question of prescribing rate for a period beyond 3 August 2013 does not arise.

- (viii). Considering the position that the VPT has no objection for the base rates of ₹33.23 per MT for dry bulk cargo, ₹69.24 per MT for break bulk cargo and ₹110.85 per MT for Other cargo as fixed vide Order of June 2010 and also since the users also have no objection to the base rates, the Order of June 2010 is modified to the extent of prescription of the above said single rates for handling each of Dry Bulk cargo, Break Bulk cargo and other cargo with the use of HMC at VPT.

- (ix). Since the rates for the use of HMC are prescribed without reference to the levels of productivity, the note prescribed at Sl. No.(ii) in Schedule 5.1.3 is deleted, as the said note draws reference to the rate payable based on the productivity level of the HMC.
- (x). The port is already rendering the service of HMC. Therefore, the single rate approved now will come into effect immediately upon the notification of the Order in the Gazette of India.
- (xi). The Order of June 2010 is modified to the limited extent of prescription of single rates without reference to levels of productivity and deletion of a note as stated in the previous paragraph. Therefore, the validity of the single rate approved now for each category of cargo shall remain co-terminus to the Order of June 2010.
- (xii). One of the users viz., Tamilnadu Electricity Board (TNEB) has requested for prescription of coastal rates for thermal coal. In this regard, it is relevant to mention here that as per policy direction of the Government, no concessional tariff are to be prescribed for thermal coal and POL including crude oil, iron ore and iron ore pellets. Therefore, the question of prescription of concessional coastal rates for thermal coal, as requested by TNEB, does not arise.

10.1. In the result, and for the reasons given above and based on a collective application of mind, the existing Schedule 5.1.3 prescribed under Section – 5 of the Scale of Rates of VPT is replaced with the following:

“5.1.3. Charges for use of Harbour Mobile Cranes installed by the private operators:

Type of cargo	Ceiling rate per tonne in ₹	
	Foreign	Coastal
Dry Bulk Cargo	33.23	19.94
Break Bulk Cargo	69.24	41.55
Other Cargo	110.85	66.51

Notes:

- (i). The formula for calculation of average berth-day out put is as follows:

$$\frac{\text{Total Quantity loaded / unloaded by the HMC}}{\text{Total time taken from vessel commencement to completion}} \times 24 \text{ hours}$$
- (ii). If one MHC works with another MHC or ELL crane/s, the Berth-day output for the crane will be ascertained on the basis of the quantity as recorded by the MHC's load meter.
- (iii). In case of breakdown of the crane for more than one hour till the vessel leaves the berth, the quantity handled by MHC will be determined taking into account cargo loaded / discharged prior to break-down divided by crane working hours and multiplied by 24.
- (iv). In case of stoppages of operation of MHC for more than two hours at a stretch for reasons not attributable to the MHC, appropriate allowance will be allowed to the crane while calculating the total time of crane operation in the vessel. Stoppages of MHC for less than 2 hours will not be taken into consideration for the above purpose. No allowance will be allowed for stoppages attributable to the MHC. All stoppages in loading / unloading operations during working of MHC are required to be certified by the Stevedore of the vessel in the daily vessel performance report.

- (v). In case shifting of a vessel becomes necessary due to breakdown / nonperformance of MHC, the shifting charges of the vessel from berth to anchorage will be recovered from the crane operator in addition to a penalty of Rs.1,00,000/- (Rupees one lakh only). The shifting charges so recovered will be refunded to the vessel's agent while the penalty will be retained by the port.
- (vi). In case of dispute on the average output, the decision of the port trust will be final and binding."

10.2. The ceiling rates fixed now will come into effect immediately from the date of notification of the Order in the Gazette of India and shall remain valid till 3 August 2013.

(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/16/2012 - VPT - Request from Visakhapatnam Port Trust to review the hire charge fixed vide Order No.TAMP/56/2008-VPT dated 16 June 2010 for the 100 tonne Harbour Mobile Cranes.

A summary of the comments received from users/ user organisations is tabulated below:

Sl. No.	Comments of users / user organisations
1.	Tamil Nadu Electricity Board (TNEB)
(i).	In our letter No.CE/M/Coal/Dir/E1/A4/F-TAMP/D-336 dated 22 September 2010 prior to fixing the tariff, TANGEDCO have suggested that the hire charges for Mobile Crane may be fixed in such a way, that the rates reduce with the increase in quantity handled so that, it encourages the port users to utilize the Mobile Crane more. It was also expressed that port will also be benefited by increase in throughputs.
(ii).	Now, it is noticed that VPT have also taken a stand in line with TANGEDCO, as many port users have restricted their loading rate to less than 12500 MT per day.
(iii).	Therefore, TANGEDCO reiterates its earlier stand on the issue of fixing the hire charges for Mobile crane, to reduce the hire charges by 5% for every increase of 1000 MT of cargo output. The base rate may be taken as ₹33.23 per MT for an output of 12500 MT.
2.	South India Corporation Limited
	The SICL had raised the issue in the TAMP hearing at Vizag. On that basis a letter was addressed to the VPT (as referred at para 2.3 of the Note).

2. A joint hearing in this case was held on 17 April 2012 at the Visakhapatnam Port Trust (VPT) premises. The VPT made a powerpoint presentation of its proposal. At the joint hearing, the VPT and the concerned users/ organisation bodies have made the following submissions:

Visakhapatnam Port Trust

- (i). We did not propose ELT. TAMP has introduced *suo motu*.
- (ii). The ELT concept introduced by TAMP is penalising efficient operation. We have witnessed a significant drop in productivity after introduction of ELT.
- (iii). Please review the rate and remove slabwise ELT.

Tamil Nadu Electricity Board

- (i). Please provide coastal vessel discount to thermal coal.

Visakhapatnam Stevedores' Association

- (i). We welcome lowering of tariff. We will offer further comments after studying the revised proposal of VPT. Generally, any incentive for efficient operation is welcome.
