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TARIFF AUTHORITY FOR MAJOR PORTS

G. No. : 146

New Delhi, 17 August 2004

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 decides to revive its earlier order No.TAMP/19/2004-JNPT dated 4 May 2004 as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/35/2004-JNPT

The Jawaharlal Nehru Port Trust

Applicant

ORDER

(Passed on this 10th day of August 2004)

This Authority had passed an order on 4 May 2004 reducing the ceiling rates of all vessel related charges prescribed in the Scale of Rates of Jawaharlal Nehru Port Trust (JNPT) by 10%. This Order was notified in the Gazette of India on 21 May 2004 vide Gazette No: 94.

2. With reference to this order, the JNPT filed a review petition dated 3 June 2004 requesting to keep the Order dated 4 May 2004 in abeyance. Considering the submissions made by JNPT, this Authority passed an order on 11 June 2004 to keep the operation of its earlier order dated 4 May 2004 in abeyance subject to the following conditions:

- (i). Comprehensive proposal for tariff review or at least a proposal for review of vessel related charges should be submitted by JNPT by 15 July 2004.
- (ii). If comprehensive proposal for review is submitted the portion relating to vessel related charges will be delinked and will be taken up for immediate consideration.

3.1. Accordingly, the JNPT vide its letter dated 15 July 2004 has filed a proposal requesting for continuance of the existing tariff till a review is undertaken after the new guidelines for tariff fixation are finalized. The JNPT has brought out the following main points:

- (i). There is likely to be a reduction in container traffic at JNPT due to the traffic diversion to the 3rd terminal from the year 2005-06. The traffic diversion is assumed to be 2 lakh TEUs for the year 2005-06.
- (ii). The total capital expenditure (including capital dredging to the extent of Rs.700 Crores) is estimated at Rs.1046.35 crores during the period 2004-05 to 2006-07.
- (iii). The port has been persistently opposing the inclusion of royalty in its tariff calculation in the earlier proposals. But TAMP has not accepted this view. Keeping in mind the revised guidelines which are under finalization, royalty, vessel related charges and lease rentals arising out of BOT have been excluded from the cost calculations. These are incomes not related to JNPT's terminal operations. Correspondingly, incremental expenditure and capital employed have also been excluded. Thus, the tariff fixation is purely terminal based.

- (iv). Based on the estimates and excluding all BOT related income and incremental expenditure, the Return On Capital Employed (ROCE) is as follows:-

Sl. No	Particulars	(ROCE %)			
		Actuals 2003-04	Projections		
		2003-04	2004-05	2005-06	2006-07
i.	Container	45.49	29.82	10.76	13.67
ii.	Bulk SWB w.e.f. 2004-05 (including vehicles)	(-) 0.65	150.68	151.65	152.36
iii.	Marine	27.07	14.95	9.31	0.24
iv.	Estate	13.66	14.04	14.85	15.71
	Total	22.56	23.10	12.70	6.86

- (v). There is a drop in the ROCE due to reduction in the container traffic at JNPT. The reduction in ROCE is below the permissible return of 17.5%. The profitability of JNPT is sensitive to changes in container traffic. In order to insulate JNPT from the vagaries of fluctuation of traffic and also taking into account competition from Maersk / CONCOR (3rd Terminal) the port will formulate volume based tariff in consultation with the shipping lines and other users. By this JNPT would be able to reap the benefits of flexible pricing within the upper ceilings approved by the TAMP and to adjust its tariff to market conditions.
- (vi). TAMP has started to review the guidelines for tariff fixation. Port will present its rate revision proposal in accordance with the revised guidelines.

3.2. On a preliminary scrutiny of the proposal filed by the JNPT, the port was requested to furnish certain information / clarification which are as follows:

- (i). To furnish an analysis of variations in income / expenditure activity-wise between the financing model considered in the Order of August 2002 and the actuals for the years 2002 – 03 and 2003 - 04.
- (ii). With reference to the expenditure towards Capital Dredging, the Ministry of Shipping (MOS) vide its letter No. PT-15012/2/97-PT (Vol. X) dated 3 March 2004 has agreed that Capital Dredging of the Channels of the Major Ports would be funded by the Government. The port is requested to indicate whether the project has been sanctioned by the Government and the financing pattern approved for Capital Dredging.
- (iii). The proposal excludes income and expenditure arising out of BOT contracts. The JNPT is requested to furnish the estimates of quantum of royalty / revenue share, vessel related charges and lease rentals for the years under consideration receivable from the existing BOT operators as well as actual receipts in the last two years. Similar estimates may be furnished in respect of proposed BOT arrangement for the 3rd container terminal.
- (iv). The port has envisaged capital expenditure of Rs.196.5 Crores in container handling equipments. In addition, the port has also projected expenditure towards hire of new cranes as well. Justification for hiring of cranes in addition to its proposed capital expenditure in container handling equipments, in the light of the anticipated position of decline in container traffic in future.

- (v). The port should furnish revised cost statements following the various principles set on financial / cost aspects in this Authority's Order of August 2002 on the general revision of Scale of Rates of the JNPT.

3.3. The JNPT vide its letter dated 26 July 2004 responded to our queries and the main points made by the JNPT are as under:

- (i). While the MOS has agreed that the capital dredging of channels of major ports would be funded by the Government, this view is yet to be accepted by the Ministry of Finance (MOF) and the Planning Commission. It appears that MOF may or may not agree to the proposal of the MOS. Till a decision is taken on this aspect capital expenditure of dredging has to be part of the tariff proposal. The capital dredging project is yet to be sanctioned by the Government of India.
- (ii). The JNPT is of the firm opinion that all the BOT incomes and expenses should not form part of the operations of the port and should not be considered in the financial statements / cost calculations. As the TAMP is not in agreement with the policy of not including BOT income and expenditure in cost calculations, the JNPT can respond only after the matter is submitted to its Board of Trustees in the meeting schedule to be held on 20 August 2004 for a policy decision.
- (iii). The response of the JNPT for the remaining queries of TAMP will be furnished after analysis and with decision of the Board of Trustees of the JNPT as the process of analysis and workingout the details are time consuming.

4.1. A hearing was held on 27 July 2004 at the Office of the Authority to hear the JNPT in the matter relating to the review of vessel related charges at JNPT. Though initially the port requested to defer the hearing to a date after its Board meeting on 20 August 2004, the JNPT attended the hearing.

4.2. At the hearing, the JNPT was requested to indicate various factors affecting their vessel related charges for the years 2005-06 and 2006-07 since the Scale of Rates that would be approved by the Authority for the vessel related charges would be followed for two years. The JNPT vehemently argued against considering royalty / revenue share receivable by the port as their income for tariff fixation. The JNPT further requested to postpone the general revision of its Scale of Rates till March 2005 and they would file their revised proposal for general review by January 2005. The JNPT was, however, informed that if the proposal for general revision of its Scale of Rates is to be postponed, then the port should delink the vessel related charges from the general revision proposal filed by it.

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

- (i). The decision to review the vessel-related charges at JNPT has been taken way back in 2002 itself when the last review of the Scale of Rates was done. Delinking vessel-related charges from the general review is necessary now in the context of the decision to keep in abeyance the implementation of reduction vessel related charges ordered earlier.
- (ii). The decision to keep in abeyance the earlier Order of reducing vessel-related charges was taken primarily to have a re-look at the cost position which the JNPT was expected to furnish alongwith its general revision proposal. JNPT has not furnished the cost statements following the

principles already set. It is noteworthy that the JNPT had not earlier challenged the principles followed while passing the tariff Order of August 2002 and, in fact, implemented that Order without any protest or appeal for review. The reasons why such principles should not continue to apply are not explained adequately.

- (iii). Various details / clarifications sought by us are also not furnished.
- (iv). This Authority has already decided about the treatment to be given to the BOT income in the cost analysis. The major capital expenditure proposed on capital dredging is only at planning stage and may actually be incurred a year later and there is no reason to include it for tariff fixation at this juncture. Most of the arguments made by JNPT do not appear to affect its revenue position in short term of one or two years.
- (v). In the absence of any well analysed cost position to show anything on the contrary, it may not be unreasonable to presume that the revenue / cost position reflected for the year 2003-04 (actuals) will not undergo any major change in the near future. That being so, there is no error found in the earlier Order of the Authority reducing vessel-related charges by 10%. The earlier Order dated 4 May 2004 need not, therefore, be still kept in abeyance.
- (vi). The JNPT has requested that it may be permitted to file its proposal for general revision of its Scale of Rates by January 2005 to enable it to undertake a review after the finalization of guidelines for tariff regulation by this Authority. The review of guidelines for tariff regulation by the Authority cannot be a basis for any major port to defer its tariff review proposal. It is to be recognized that the existing guidelines for tariff regulations are still in vogue. Nevertheless, this Authority is inclined to extend the validity of the existing Scale of Rates other than vessel related charges of the JNPT till 31 March 2005. JNPT is, however, directed to file its revised proposal for general review of its tariff by 31 January 2005. In the event of non receipt of a comprehensive tariff proposal from the JNPT by 31 January 2005, this Authority may be constrained to review the Scale of Rates of JNPT *suo motu* based on the information available. The proposal filed by the JNPT is remitted to it for further action within the stipulated time limit.

6. In the result, and for the reasons given above, and based on a collective application of mind, this Authority orders implementation of its earlier Order dated 4 May 2004 in supercession of its earlier Order dated 11 June 2004.

7. The revised (reduced) vessel-related charges at JNPT shall come into effect after expiry of 15 days from the date of notification of this Order in the Gazette of India.

(A.L. Bongirwar)
Chairman