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Tariff Authority for Major Ports

G. No. : 22

New Delhi, 22 January 2007

NOTIFICATION

In exercise of the powers conferred by Sections 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal received from the New Mangalore Port Trust for amendment to the conditionalities governing allotment of land for stacking of export cargo as in the Order appended hereto.

(A.L.Bongirwar)
Chairman

Tariff Authority for Major Ports

Case No. TAMP/32/2006 - NMPT

New Mangalore Port Trust (NMPT)

Applicant

ORDER

(Passed on this 29th day of December 2006)

This case relates to the proposal received from the New Mangalore Port Trust (NMPT) for amendment to the conditionalities governing allotment of land for stacking of export cargo.

2.1. This Authority in its Order dated 9 August 2001 relating to the general revision proposal of the NMPT had prescribed the conditionalities applicable for the lands allotted on monthly basis for storage of goods outside the security wall under Chapter VI of the Scale of Rates (SOR) based on the conditionalities earlier notified in the Karnataka Gazette notification dated 16 March 1989. No separate conditionality governing the allotment of land for storage of export cargo inside the security wall was prescribed since the NMPT did not include the same in its proposal then.

2.2. Subsequently, while approving the license fee for semi-paved stackyard on short term license basis outside the security compound wall, this Authority vide its Order dated 5 November 2001 has reiterated the conditionalities relating to allotment of lands prescribed in the Order dated 9 August 2001.

2.3 The lease rentals of NMPT lands were revised by this Authority vide its Order dated 31 January 2005. The exercise was limited to revision of lease rentals in line with the Government guidelines. No modification was proposed by NMPT in the general conditionalities at that point of time.

3.1. The NMPT has explained the following grounds for proposing amendments to some of the conditionalities relating to allotment of land for stacking of export cargo:

- (i). At the request of exporters, the port allots certain plots inside/outside the security compound wall for stacking iron ore fines/timber/granite on monthly rental basis at the usual conditions and it was expected that the allottees shall remove the cargo for shipment atleast within 6 months from the date of allotment.
- (ii). At the beginning of iron ore fines export, this expectation was normally met by the exporters and the allotted land was not used as a storage place without any shipment taking place.
- (iii). Of late, it is observed that some of the exporters are bringing small quantity of cargoes and keeping it for months together without making any shipment. The port is, therefore, not in a position to allot the plot for needy exporters who have ready cargo and export orders for shipment. Further, the port is deprived of earning vessel and cargo related income without the shipment taking place.

3.2. The port has proposed the following amendments to the existing conditionalities which are to act as a deterrent and prevent misuse of the allotted lands:

- (i). In case the licensee fails to remove the goods from the encroached area, penal rate is being levied at the rate not exceeding five times the normal rate. As against this, it has proposed penal rate in three tier:
 - (a). Two times the normal Licensee Fee upto 3 months.
 - (b). Four times the normal License Fee above 3 months upto 7 months;

- (c). Ten times of the normal License Fee thereafter.
- (ii) Penal interest for delayed payment of licence fee is proposed at the rate applicable from time to time as against the existing penal interest @ 15%.
- (iii). The proposed deposit amount is reduced from three months to one month's license fee.

3.3. Apart from these, the NMPT has proposed to merge the existing conditionalities applicable for outside the security wall as approved by this Authority in its Order of 9 August 2001 and the conditionalities notified in the Karnataka Gazette in May 1987 pertaining to inside the security wall. Each of the amendments proposed by the NMPT is tabulated in the subsequent analysis alongwith the observations of this Authority. The port has not proposed any modification in the existing rates for allotment of land.

4.1. In accordance with the consultative procedure prescribed, the proposal received from the NMPT was circulated to the concerned user organisations seeking their comments.

4.2. The comments received from the user/user organisations were forwarded to the NMPT as feedback information. The NMPT has responded to the comments of some of the user/user organisations.

5.1. The proposal of New Mangalore Port Trust (NMPT) is mainly to amend the existing penal license fee for encroachment / unauthorised occupation and amendment in penal rate of interest rate for delayed payment of license fee. The users have not raised any pointed objection to these amendments proposed by the NMPT. They have suggested a few modifications to existing conditionalities governing the allotment of plots inside/outside the security compound wall of the port. The suggestions made by the user associations deal with general conditions only. The NMPT has also clarified its position with reference to the objections raised by the users. Since there have been no pointed objections from the users consulted in this case, setting up a joint hearing was not considered necessary in this case.

5.2. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received from the concerned user/user organisations will be sent separately to the relevant parties. These details are also available at our website <http://tariffauthority.gov.in>.

6.1. The proposal of the NMPT is borne out of its concern to prevent misuse of port properties. As submitted by the port, the land allotted for storage of cargo on short term basis is being mis-utilised by some of the exporters who keep the land allotted to them for months together without making any shipment. Thereby, the port is not in a position to allot the plot for needy exporters who have ready cargo for shipment. Consequently, this has an impact on its revenue stream position. In order to tackle this issue, it has proposed to modify some of the existing penal provisions for unauthorised occupation of land, encroachment of land, etc. The existing penal license fee is levied at five times the applicable license fee for such unauthorised occupation of land, encroachment of land, etc. This is proposed in three tier with graded increase in penal license fee for longer duration of stay. None of the users have raised any objection to the proposed amendment. That being so, this Authority is inclined to approve the proposed structured penal license fee.

6.2. The NMPT has not specified the rate of penal interest leviable on delayed payment by users. It has proposed to levy the penal interest at the rate applicable from time to time in such cases. It may be appropriate to prescribe a specific penal rate. Incidentally, the Government guidelines of March 2004 on land policy do not prescribe penal rate for delayed payments. Clause 2.18.2 of the revised tariff guidelines, prescribes the penal interest for delayed payments/refunds at 2% above the Prime Lending Rate (PLR) of the State Bank of India, which is being applied for other tariff items. This Authority while approving the conditionalities governing allotment of land for semi paved stack yard in November 2001 had categorically observed that the then penal interest rate for delayed payment prescribed in the SOR of the NMPT should be applied

for this purpose. Even the Karnataka Gazette Notification of 1989 indicates a specific penal interest rate for delayed payment.

In the light of this position, the proposed provision relating to penal rate of interest on delayed payments by users is updated with interest rate of 13% per annum being 2% above the prevailing Prime Lending Rate (PLR) of the State Bank of India as per clause 2.18.2 of the revised tariff guidelines.

6.3 The existing and the proposed conditionalities do not specify time limit within which the port shall refund the security deposit. As rightly pointed out by the Kanara Chamber of Commerce and Industry (KCCI) and New Mangalore Port Clearing and Forwarding Agents' Association (NMPCFAA), when a time limit is prescribed for the payment of license fee by the allottees, there should be a similar condition applicable in case of refund by the port. The revised tariff guidelines prescribe time limit of 20 days from the production of documents by users beyond which port shall pay penal interest for delayed refund which is already included in the SOR of the NMPT for other tariff items. Similar condition is prescribed in case of the land allotted on short term basis. The penal interest rate prescribed for delayed payment by the licensee will equally apply in case of delayed refund of security deposit by the NMPT. The proposed provision at C(VII) relating to refund of security deposit by the port is suitably modified to that extent.

6.4. Some of the proposed conditionalities governing allotment of land/ space for storage of cargo outside / inside the security compound wall on monthly basis seek to delegate powers to "Chairman ", "Traffic Manager", "Chief Engineer", etc. It has been the consistent practice of this Authority not to specify delegation of power to different functionaries of the Port Trusts. In all such cases, this Authority has been mentioning the name of the concerned Port (in place of the functionary proposed) and leaving it to the Port Trust to decide on the delegation. Accordingly, the words 'NMPT or the authorised officer of the NMPT' should be included wherever the port has specified the individual offices.

6.5. The existing provision at C(III) states that license fees shall be payable from the date of allotment / occupation of the land / space. The Kanara Chamber of Commerce and Industry (KCCI) and the New Mangalore Port Clearing and Forwarding Agents Association (NMPCFAA) have suggested to modify this provision to state that the License fees or charges should be payable either from the date of receipt of the allotment letter by the licensee or occupation of the land / space in accordance with the rate laid down in the Schedule of Rates, whichever is earlier. The suggestion made by the user Associations is found to be reasonable and hence is accepted.

6.6. The condition proposed at C(VIII) gives NMPT the right to resume possession of land/ space wholly or partly any time. The Government guidelines of 2004 do not mention about such a condition in case of land allotted on license. The user Associations have requested that they should be given a notice period of 15 days about the proposed action of the NMPT. The NMPT also admits that normally notice is given to the licensee about the ports intention to take over the land/ space allotted but has not specified the time period. In view of the point made by the user associations and the submissions made by the NMPT, the proposed condition is modified to state that notice of 7 days in case of license less than 6 months and 15 days notice for license issued more than 6 month but less than 11 months shall be given by the port before resuming the land/ space allotted to the licensee. No such notice is necessary in case of unauthorised occupancy or on normal expiry of the licence tenure.

6.7. The NMPT has proposed that the Sub Committee of the Board of Trustees of the Port shall decide when a doubt arises regarding interpretation of the rules. This Authority has already vide its earlier Order dated 9 August 2001 clarified that with the amendment to the Major Port Trust Act 1963, the Board is not anymore empowered to interpret the Scale of Rates approved by this Authority. In case of any dispute / doubt over the provisions in the Scale of Rates, only this Authority can resolve / clarify it.

6.8. A general note is incorporated in the Scale of Rates stating that the conditionalities governing the land allotted inside/outside the security wall on monthly license charges shall apply to the extent they are not inconsistent with the conditions prescribed in the Land Policy guidelines announced by the Government in March 2004. It is also clarified that a license shall be upto a maximum period of 11 months and that each renewal of license shall be treated as fresh license as per clause 5.1.1. (b) and 5.2.2. (d) of the land policy guidelines issued by the Government in March 2004.

7. A comparative position of the conditionalities approved by this Authority vide its Order dated 9 August 2001 and the conditionalities proposed by the NMPT alongwith our remarks is tabulated hereunder:

Conditionalities approved as per the Order dated 9 August 2001	Amendments proposed by the NMPT.	Remarks of TAMP
A. ALLOTMENT:		
<p>Persons requiring allotment of land for storage of their goods outside the security compound wall of New Mangalore Port Trust on monthly license basis may apply in writing for a license in the form prescribed by the NMPT from time to time. But, it shall be at the discretion of the NMPT to allot or refuse such land.</p>	<p>Persons requiring allotment of land/space for storage of their goods outside the security compound wall or within the security compound wall of New Mangalore Port Trust on monthly license basis may apply in writing to the Chief Engineer or the Traffic Manager for a license in the form prescribed by the NMPT from time to time. But, it shall be at the discretion of the Chairman to allot or refuse to allot such space/land. The space allotted shall not be sublet without the previous permission of the Chairman.</p>	<p>1. The proposed condition is accepted.</p> <p>2. Delegating and specifying the Officer is the administrative discretion of the port. It may be sufficient to mention 'the NMPT' instead of specifying the officer proposed by NMPT.</p> <p>3. The Government guidelines of March 2004 does not mention about subletting in case of land allotted on license. In case of lease, clause 5.2.13(b) of the Land Policy guidelines issued by the MSRTH in March 2004 allows the lessee to sublet/partially sublet the leased premises after obtaining the prior approval of the port and it should be for the purpose mentioned in the land use plan of the port provided the land is outside the Customs bound area. In this regard a general note is incorporated to state that the conditionalities / notes governing the license fee for inside / outside the compound security wall shall apply to the extent they are not inconsistent with the conditions prescribed in the Land Policy guidelines announced by the Government in March 2004.</p>
B. LICENCEE'S RESPONSIBILITY:		
<p>In applying for land for storage of goods, the applicants for land shall accept all risks and responsibility for goods so stored/stocked. The occupation of land shall be subject</p>	<p>In applying for land/space for storage of goods/cargo, the applicants for land/space shall accept all risks and responsibility for goods so</p>	<p>1. This condition about the port not to be regarded as a bailee is an existing provision applicable for land allotted inside the security wall as per the</p>

<p>to the conditions set-forth in sub-clause (C) below (which shall be reproduced in the license deed). Encroachment or unauthorised occupation of the NMPT land, the stacking of goods on the NMPT land and stacking goods on NMPT Railway track, plants, equipments, approach road, etc., causing obstruction to the movement of traffic by the licensees will involve a liability to pay a penalty at the rate not exceeding five times the license fee laid down in the Scale of Rates, in addition to the cost of rectifying damages caused to the NMPT properties. If the licensee fails to remove the goods from the encroached area in spite of notice to do so, the goods will be removed elsewhere by the NMPT at the risk and the cost of the licensee and penal rent at the rate not exceeding five times the normal rates will be levied on the land occupied by the goods so removed.</p>	<p>stored/stocked. The occupation of land for outside security compound wall and inside the security compound wall shall understand that the locking by the Trust of sheds partly or wholly allotted to the licensees shall not be regarded as making the Board a bailee of the goods so stored unless a receipt in this regard is passed by the Board to them. The occupation of land/space in open or under cover shall be subject to the conditions set-forth in sub-clause (C) below (which shall be reproduced in the license deed/permit/agreement).</p> <p>Encroachment or unauthorised occupation of the Trust's land and stacking of goods/cargo on the Trusts's Railway track, plants, equipments, approach road, etc., causing obstruction to the movement of traffic by the licensee will involve a liability to pay a penalty at the rate laid down in the Trust's scale of rates, in addition to the cost of rectifying damages caused to the Trusts's properties. If the licensee fails to remove the goods from the encroached area in spite of notice to do so, the goods will be removed elsewhere by the Trust at the risk and the cost of the licensee and penal License Fee at the following rate shall be levied on the land occupied by the goods so removed:</p> <p>(a). Two times the normal License Fee upto 3 months;</p> <p>(b). Four times the normal License Fee above 3 months upto 7 months; and</p> <p>(c). Ten times of the normal License Fee thereafter.</p>	<p>Karnataka Gazette Notification of May 1987. It is proposed to apply this condition uniformly for land allotted inside / outside the security wall. No objection are received from the users. Hence the proposed condition is accepted.</p> <p>2. Since the proposed modification is to act as a deterrent from mis-utilisation of the space allotted and also recognising that the users have not raised any objection in this regard, the modification proposed in the penal license fee is accepted.</p>
<p>C. CONDITIONS:</p>		
<p>(i). Goods stored under the license deed shall be at the entire risk and responsibility of the licensees. The NMPT will not be in any way take responsibility for pilferage, theft, fire or loss thereof.</p>	<p>(i). Goods stored under the license deed / permit / agreement shall be at the entire risk and responsibility of the licensees. The Port Trust will not be in any way take responsibility</p>	<p>No major change proposed.</p>

<p>The licensees shall post their own watch to safeguard the goods stored at their allotted land to prevent any unauthorised occupation of such land by others.</p>	<p>for pilferage, theft, fire or loss thereof. The licensees shall post their own watch to safeguard the goods stored at their allotted space and to prevent any unauthorised occupation of such land/space by others.</p>	
<p>(ii). The licensee shall not construct or put up any buildings, erection or convenience or canteens on the land occupied under the license deed except on the written permission of the NMPT. The licensee shall agree to remove such building, erection or convenience or canteen on the land and restore the land to its original condition at the time of termination of the license and if the licensees fail, the NMPT will arrange for removal of such erection at the cost, risk and responsibility of the licensees.</p>	<p>(ii). The licensee shall not construct or put up any buildings, erection or convenience or canteens on the land / space occupied under the license deed / permit except on the written permission of the Chairman. The licensee shall agree to remove such building, erection or convenience or canteen on the land/space and restore the land/space to its original condition at the time of termination of the license/permit and if the licensee fail, the Chairman will arrange for removal of such erection at the cost, risk and responsibility of the licensees.</p>	<p>Clause 5.2.2 (d) of the land policy guidelines of March 2004 categorically mentions that no permanent structure shall be allowed to be erected on licensed land. The proposed amendment is modified to reflect the Government Guideline.</p>
<p>(iii). The license fees or charges shall be paid from the date of allotment / occupation of the land in accordance with the rate laid down in the Scale of Rates and shall be remitted for each calendar month in advance i.e., before 1st of every month</p>	<p>(iii). The license fees or charges shall be paid from the date of allotment/occupation of the land/space in accordance with the rate laid down in the Board's Scale of Rates and shall be remitted for each calendar month in advance to the Financial Advisor & Chief Accounts Officer (FA&CAO) i.e., before 1st or 5th of every month as the case may be. In case the payment is not received before 1st or 5th of every month, as the case may be, a penal interest at the rate applicable from time to time on the accumulated arrears shall be paid in addition to the license fee. In any case the license fee should not accumulate for more than 15 days from the date when the advance license fee becomes payable. In case the license fee is not received by 15th of every month at the latest and the land is in occupation of the licensee, double the normal rate will be levied from the due date till the license fee is paid.</p>	<p>1. It may be mentioned that as per the Karnataka Gazette Notification dated 14 May 1987, the date of payment of license fees or charges for the land/space allotted inside the security wall is 5th of every month. As per the Notification dated 16 March 1989 applicable for outside the security wall, the date of payment is prescribed as 1st of every month. It has proposed to merge these conditions to state that the license fee shall be payable on 1st or 5th of every month as the case may be. No objection from the users in this regard. The proposed modification is accepted.</p> <p>2. It would be appropriate to prescribe a specific rate of penal interest.</p> <p>Accordingly, the proposed provision relating to penal rate of interest on delayed payments by users is updated with interest rate of 13% per annum being 2% above the prevailing PLR of the State Bank of India.</p>

		<p>3. The condition about levy of double the normal license fee in case payment is not received by 15th of every month is not prescribed in the Karnataka Gazette Notification of 1987. The Karnataka Gazette Notification of 1989 prescribes such a provision for outside the security wall. However, this was not approved by this Authority in the August 2001 Order. The provision to levy penal interest will cover the delay in remittance of payment by the allottees.</p> <p>4. The Kanara Chamber of Commerce and Industry(KCCI) and the New Mangalore Port Clearing and Forwarding Agents Association (NMPCFAA) have suggested to modify this provision to state that the Licensee fees or charges shall be payable either from the date of receipt of the allotment letter by the licensee or occupation of the land / space whichever is earlier. The suggestion made by the user Association seems to be reasonable and hence is accepted. Accordingly, the proposed condition is modified to that extent.</p>
<p>(iv). The licensee shall vacate the land occupied by them if the license is not renewed by 15th of every month at the latest and in case the license fails to hand over the land in vacant possession on the date of expiry of the license granted after removing such of the structures or constructions put up, the NMPT shall have the right to remove such structure and the goods stored in such land to any other alternative land in any part of the Port's Estate at the cost and risks and responsibility of the licensees and in addition, the NMPT shall charge a penalty at the rate not exceeding five times the normal license fees leviable under the Scale of Rates for the period the goods may have remained within the Port's Estate beyond the period for which the license was granted.</p>	<p>(iv). The licensee shall vacate the land / space occupied by them if the license / permit is not renewed at the latest and in case the licensee fails to hand over the land / space in vacant possession on the date of expiry of the license/permit granted after removing such of the structures or constructions put up, the Chairman shall have the right to remove such structure and the goods stored in such land/space to any other alternative land/open or covered space in any part of the Port's premises at the cost and risks and responsibility of the licensees and in addition, penalty Licensee Fee at the following rate shall be levied on the space occupied by the goods so removed:</p>	<p>1. The proposed change is approved.</p> <p>2. As already mentioned earlier, delegation of power towards specific officer is modified.</p> <p>3. The proposed penal license fee is approved for reasons explained at clause 'B' above.</p>

	<p>(a). Two times the normal License Fee upto 3 months;</p> <p>(b). Four times the normal License Fee above 3 months and upto 7 months; and</p> <p>(c). Ten times of the normal License Fee thereafter.</p>	
	<p>(v). The permit shall lapse automatically at the expiry of the Calendar month for which it has been issued. If the Licensee requires a renewal of the license, an application for renewal duly accompanied by the receipt from the FA and CAO on payment of an advance fee must be made and reach the Traffic Manager seven days before the expiry of the period of the permit. Failure to apply for renewal of the permit seven days in advance before the expiry of the period of validity of the license and forwarding the required receipt for the remittance of the fees and charges will attract penal interest at such rate applicable from time to time on the accumulated arrears and shall be paid in addition to the license fee. In any case the license fee should not accumulate for more than 15 days from the date when advance license fee become payable.</p>	<p>1. The Orders of 9.8.2001 and 5.11.2001 of this Authority do not prescribe any condition for renewal of license. The Karnataka Gazette Notification dated 14 May 1987, however, prescribes this condition for land allotted within the security wall. It has proposed to apply this provision uniformly to both inside and outside the security wall. The proposed change is approved.</p> <p>2. The penal interest rate needs to be updated at 13% per annum as already explained at Clause C (iii) above.</p> <p>3. It is decided to incorporate a condition to state that the license shall be for maximum period upto eleven months (11 months) in conformity with Clause 5.2.2. (b) of the guidelines issued by the Government in March 2004. Each renewal of license shall be treated as fresh license as per clause 5.1.1. (b) of the Govt. guidelines.</p>
	<p>(vi). No licensee shall convert the space allotted to him/them into private bonded areas except with the written permission of the Traffic Manager. Failure to obtain the prior written permission from the Traffic Manager shall attract levy of penalty as follows:</p> <p>(a). Two times the normal License Fee upto 3 months;</p> <p>(b). Four times the normal License Fee above 3 months upto 7 months; and</p>	<p>1. It has proposed to apply this provision uniformly to land / space allotted both inside / outside the security wall and the proposed provision is accepted by the Authority.</p> <p>2. Recognising that the proposed modification is mainly to act as a deterrent from mis-utilisation of the space allotted, the proposed modification in the penal license fee is accepted in line with the observation of this Authority at Clause B above.</p>

	(c). Ten times of the normal License Fee thereafter till the goods/cargo cleared from the space.	3. As already mentioned earlier, delegation of power towards specific officers is to be replaced with the word 'NMPT'.
(v). All licensees shall deposit with the NMPT, an amount equivalent to three months license fee on the land allotted to them under the license as a guarantee for the due and faithful performance of the condition set forth in the license and the deposit will be returned when the land is vacated finally, less any amount that may be due to the NMPT.	(vii). Subject to the provisions of Section 51 of the MPT Act in this regard, all licensees shall deposit with the Board, an amount equivalent to one month's license fee on the land/space allotted to them under the license/permit as a guarantee for the due and faithful performance of the condition set-forth in the license/permit and the deposit will be returned when the land/space is vacated finally, less any amount that may be due to the Board.	1. Since the proposed deposit amount will undoubtedly benefit most of the users, the proposed amendment is approved. Section 51 of the Major Port Trust Act is not relevant to the proposed condition and hence this reference is deleted. 2. The proposed conditionality, however, does not specify the time limit within which the port shall refund the security deposit. As rightly pointed out by the KCCI and NMPCFAA when a time limit is prescribed for the payment of license fee by the licensees, there should be a similar condition applicable in case of refund by a major port. The revised tariff guidelines prescribes time limit of 20 days from the date of completion of service or production of all documents from the users, whichever is later beyond which the port is required to pay penal interest for delayed refund. This is already prescribed in the SOR of the NMPT for other tariff items. Similar condition is prescribed in case of the NMPT land allotted on license. The penal interest rate of 13% per annum prescribed for delayed payment by the licensee shall uniformly apply in case of delayed refunds of security deposit by the NMPT.
(vi). The NMPT shall have the right at any time to resume the possession of the land wholly or partly which is required by the Port/not occupied by the licencees, in which event the proportionate reduction in licence fee will be allowed. In case of such a resumption or possession of land, the licensee shall not be entitled to claim any compensation on account of such resumption or possession or to remove and take away improvements, if any, made	(viii). The Chief Engineer / Traffic Manager shall have the right at any time to resume the possession of the land/space wholly or partly which is required by the Port/not occupied by the licensee, in which event the proportionate reduction in fee will be allowed. In case of such a resumption or possession of land, the licensee shall not be entitled to claim any compensation on account of such resumption or possession	1. As already mentioned earlier, instead of specifying the officer, it is sufficient to mention 'NMPT'. 2. The condition should be modified to specify the notice period, as explained in para.6.6. above.

by him on the land.	or to remove and take away improvements, if any, made by him on the land.	
(vii). The licensee shall agree to comply with all rules or directions issued by the NMPT from time to time. Should the licensee neglect to comply with the rules or directions, the NMPT may terminate the license.	(ix). The licensee shall agree to comply with all rules or directions issued by the Board from time to time. Should the licensee neglect to comply with the rules or directions, the Chairman may terminate the license.	No change proposed.
(viii). The licensee shall agree that all payments and expenses of whatever sort due to the Port in respect of land allotted to the licensee, shall be recoverable at the rates prescribed in the NMPT Scale of Rates.	(x). The licensee shall agree that all payments and expenses of whatever sort due to the Trust in respect of land/space allotted to the licensee, shall be recoverable at the rates prescribed in the Board's Scale of Rates from time to time.	No modification proposed.
(ix). The licensee shall comply with all rules and regulations that may from time to time be issued by the local authorities of the inspector of Explosives, the Department of Explosive, Government of India or whomsoever concerned in relation to the storage of goods under the license.	(xi). The licensee shall comply with all rules and regulations that may from time to time be issued by the local authorities or the Inspector of Explosives, the Department of Explosive, Government of India or whomsoever concerned in relation to the storage of goods under the license/permit.	No major modification proposed.
(x). The licensee shall have the right to appeal against resumption of possession of the land to the Board of Trustees of the New Mangalore Port Trust within a period of 30 days from the date of receipt of the Order Appealed against and the decision of the Board is final in this regard.	(xii). The licensee shall have the right to appeal against resumption of possession of the land to the Board of Trustees of the New Mangalore Port Trust within a period of 30 days from the date of receipt of the Order Appealed against and the decision of the Board is final in this regard.	No modification proposed.

8. In the result, and for the reasons given above, and based on a collective application of mind, this Authority decides to replace the existing conditionalities A, B, C (i) to (x) prescribed in Chapter VI of the Scale of Rates of the NMPT Order No.TAMP/18/2001-NMPT dated 9 August 2001 with the conditionalities attached as **Annex**.

(A.L. Bongirwar)
Chairman

Annex

The existing conditionalities A, B, C (i) to (x) prescribed under Chapter VI - Allotment of land in the Order number TAMP/18/2001-NMPT dated 9 August 2001 are deleted and replaced as follows:

A. GENERAL NOTE TO CHAPTER VI:

All the conditions / notes stated hereinunder to govern the rates prescribed in this Chapter shall apply to the extent they are not inconsistent with the conditions prescribed in the Land Policy guidelines announced by the Government in February / March 2004. In case of disagreement, the conditions prescribed by the Government in the Land Policy guidelines shall prevail.

B. ALLOTMENT:

Persons requiring allotment of land / space for storage of their goods outside the security compound wall or within the security compound wall of New Mangalore Port Trust (NMPT) on monthly license basis may apply in writing to NMPT for a license in the form prescribed by the NMPT from time to time. But, it shall be at the discretion of the NMPT to allot or refuse to allot such space / land. No subletting of the licensed premises shall be allowed.

C. LICENCEE'S RESPONSIBILITY:

In applying for land / space for storage of goods / cargo, the applicants for land / space shall accept all risks and responsibility for goods so stored / stocked. The locking by the NMPT of sheds partly or wholly allotted to the licensees whether inside or outside the security compound wall shall not be regarded as making the NMPT a bailee of the goods so stored unless a receipt in this regard is passed by the NMPT to them. The occupation of land / space in open or under cover shall be subject to the conditions set-forth in sub-clause (D) below (which shall be reproduced in the license deed / permit / agreement).

Encroachment or unauthorised occupation of the NMPT's land and stacking of goods / cargo on the NMPT's Railway track, plants, equipment, approach road, etc., causing obstruction to the movement of traffic by the licensee will involve a liability to pay penal rate as specified below, in addition to the cost of rectifying damages caused to the NMPT's properties. If the licensee fails to remove the goods from the encroached area in spite of notice to do so, the goods will be removed elsewhere by the NMPT at the risk and the cost of the licensee and penal License Fee at the following rate shall be levied on the land occupied by the goods so removed:

- (a). Two times the normal License Fee upto 3 months;
- (b). Four times the normal License Fee above 3 months upto 7 months; and
- (c). Ten times of the normal License Fee thereafter.

D. CONDITIONS

- (i). Goods stored under the license deed / permit / agreement shall be at the entire risk and responsibility of the licensees. The NMPT will not in any way take responsibility for pilferage, theft, fire or loss thereof. The licensees shall post their own watch to safeguard the goods stored at their allotted space and to prevent any unauthorised occupation of such land / space by others.
- (ii). The licensee shall not construct or put up any permanent structure, buildings, erection or convenience or canteens on the land/space occupied under the license deed/permit. The licensee shall restore the land / space to its original condition at the time of termination of the license/permit and if the licensee fails,

the NMPT will arrange for such restoration at the cost, risk and responsibility of the licensee.

- (iii). The license fees or charges shall be paid from the date of receipt of the allotment letter by the licensee or occupation of the land/ space by the licensee, whichever is earlier, in accordance with the rates prescribed in the NMPT's Schedule of Rates. The license fee shall be remitted for each calendar month in advance to the NMPT i.e. before 1st or 5th of every month, as the case may be. In case the payment is not received before the due date, penal interest at 13% per annum shall be levied on the accumulated arrears in addition to the license fee.
- (iv). The licensee shall vacate the land/space occupied by them if the license / permit is not renewed at the latest. In case the licensee fails to hand over the land/space in vacant possession on the date of expiry of the license/permit granted after removing of such structures or constructions put up, the NMPT shall have the right to remove such structures and the goods stored in such land / space to any other alternative land / open or covered space in any part of the Port's premises at the cost and risks and responsibility of the licensees and in addition, penalty Licensee Fee at the following rate shall be levied on the space occupied by the goods so removed:
 - (a). Two times the normal License Fee upto 3 months;
 - (b). Four times the normal License Fee above 3 months and upto 7 months; and
 - (c). Ten times of the normal License Fee thereafter.
- (v). The permit shall lapse automatically at the expiry of the calendar month for which it has been issued. The license shall be upto a maximum period of eleven (11) months and license fee is leviable as per the notified Schedule of Rates. Each renewal of license shall be treated as fresh license. If the licensee requires a renewal of license, an application for renewal duly accompanied by the receipt from the NMPT on payment of an advance fee must be made and reach the NMPT seven days before the expiry of the period of the permit. Failure to apply for renewal of the permit seven days in advance before the expiry of the period of validity of the license and forwarding the required receipt for the remittance of the fees and charges will attract penal interest at the rate of 13% per annum on the accumulated arrears and shall be paid in addition to the license fee. In any case the license fee should not accumulate for more than 15 days from the date when advance license fee become payable.
- (vi). No licensee shall convert the space allotted to him / them into private bonded areas except with the written permission of the NMPT. Failure to obtain the prior written permission from the NMPT shall attract levy of penalty as follows:
 - (a). Two times the normal License Fee upto 3 months;
 - (b). Four times the normal License Fee above 3 months upto 7 months; and
 - (c). Ten times of the normal License Fee thereafter till the goods / cargo is cleared from the space allotted.
- (vii). All licensees shall deposit with the NMPT, an amount equivalent to one month's license fee on the land / space allotted to them under the license / permit as a guarantee for the due and faithful performance of the conditions set-forth in the license / permit and the deposit will be returned when the land / space is vacated finally, less any amount that may be due to the NMPT. In case, the security

deposit is not refunded within 20 days from the date when land / space is finally vacated or on production of documents by the licensee whichever is later, the NMPT shall pay penal interest at the rate of 13% per annum on such delayed refunds.

- (viii). The NMPT shall have the right at any time to resume the possession of the land / space wholly or partly which is required by the port / not occupied by the licensee, in which event the proportionate reduction in license fee will be allowed. In any case, the NMPT shall give a notice period of 7 days in case license is for less than six months and 15 days notice period in case license is for more than six months (but less than 11 months) about its proposed intention of resuming the land / space allotted to the licensee. In case of unauthorised occupation or encroachment or on normal expiry of the license tenure, no such notice shall be issued and the port shall resume the land / space required by the port immediately. In case of such a resumption or possession of land, the licensee shall not be entitled to claim any compensation on account of such resumption or possession or to remove and take away improvements, if any, made by him on the land.
- (ix). The licensee shall have the right to appeal against resumption of possession of the land to the Board of Trustees of the New Mangalore Port Trust within a period of 30 days from the date of receipt of the Order Appealed against and the decision of the Board of Trustees of the NMPT is final in this regard.
- (x). The licensee shall agree to comply with all rules or directions issued by the NMPT from time to time. Should the licensee neglect to comply with the rules or directions, the NMPT may terminate the license.
- (xi). The licensee shall agree that all payments and expenses of whatever sort due to the port in respect of land / space allotted to the licensee, shall be recoverable at the rates prescribed in the Scale of Rates of NMPT.
- (xii). The licensee shall comply with all rules and regulations that may from time to time be issued by the local authorities or the Inspector of Explosives, the Department of Explosive, Government of India or whomsoever concerned in relation to the storage of goods under the license / permit.

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The existing conditionalities A, B, C (i) to (x) prescribed under Chapter VI - Allotment of land in the Order number TAMP/18/2001-NMPT dated 9 August 2001 may be deleted and replaced as follows:

A. GENERAL NOTE TO CHAPTER VI:

All the conditions / notes stated hereinunder to govern the rates prescribed in this Chapter shall apply to the extent they are not inconsistent with the conditions prescribed in the Land Policy guidelines announced by the Government in February / March 2004. In case of disagreement, the conditions prescribed by the Government in the Land Policy guidelines shall prevail.

B. ALLOTMENT:

Persons requiring allotment of land / space for storage of their goods outside the security compound wall or within the security compound wall of New Mangalore Port Trust (NMPT) on monthly license basis may apply in writing to NMPT or its authorised officer for a license in the form prescribed by the NMPT from time to time. But, it shall be at the discretion of the NMPT to allot or refuse to allot such space / land. No subletting of the licensed premises shall be allowed.

C. LICENCEE'S RESPONSIBILITY:

In applying for land / space for storage of goods / cargo, the applicants for land / space shall accept all risks and responsibility for goods so stored / stocked. The locking by the NMPT of sheds partly or wholly allotted to the licensees whether inside or outside the security compound wall shall not be regarded as making the NMPT a bailee of the goods so stored unless a receipt in this regard is passed by the NMPT to the them. The occupation of land / space in open or under cover shall be subject to the conditions set-forth in sub-clause (D) below (which shall be reproduced in the license deed / permit / agreement).

Encroachment or unauthorised occupation of the NMPT's land and stacking of goods / cargo on the NMPT's Railway track, plants, equipment, approach road, etc., causing obstruction to the movement of traffic by the licensee will involve a liability to pay penal rate as specified below, in addition to the cost of rectifying damages caused to the NMPT's properties. If the licensee fails to remove the goods from the encroached area in spite of notice to do so, the goods will be removed elsewhere by the NMPT at the risk and the cost of the licensee and penal License Fee at the following rate shall be levied on the land occupied by the goods so removed:

- (a). Two times the normal License Fee upto 3 months;
- (b). Four times the normal License Fee above 3 months upto 7 months; and

- (c). Ten times of the normal License Fee thereafter.

D. CONDITIONS

- (i). Goods stored under the license deed / permit / agreement shall be at the entire risk and responsibility of the licensees. The NMPT will not in any way take responsibility for pilferage, theft, fire or loss thereof. The licensees shall post their own watch to safeguard the goods stored at their allotted space and to prevent any unauthorised occupation of such land / space by others.
- (ii). The licensee shall not construct or put up any permanent structure, buildings, erection or convenience or canteens on the land/space occupied under the license deed/permit. The licensee shall restore the land / space to its original condition at the time of termination of the license/permit and if the licensee fails, the NMPT will arrange for such restoration at the cost, risk and responsibility of the licensee.
- (iii). The license fees or charges shall be paid from the date of receipt of the allotment letter by the licensee or occupation of the land/ space by the licensee, whichever is earlier, in accordance with the rates prescribed in the NMPT's Scale of Rates. The license fee shall be remitted for each calendar month in advance to the NMPT i.e. before 1st or 5th of every month, as the case may be. In case the payment is not received before the due date, penal interest at 13% per annum shall be levied on the accumulated arrears in addition to the license fee.
- (iv). The licensee shall vacate the land/space occupied by them if the license / permit is not renewed at the latest. In case the licensee fails to hand over the land/space in vacant possession on the date of expiry of the license/permit granted after removing of such structures or constructions put up, the NMPT shall have the right to remove such structures and the goods stored in such land / space to any other alternative land / open or covered space in any part of the Port's premises at the cost and risks and responsibility of the licensees and in addition, penalty Licensee Fee at the following rate shall be levied on the space occupied by the goods so removed:
- (a). Two times the normal License Fee upto 3 months;
- (b). Four times the normal License Fee above 3 months and upto 7 months; and
- (c). Ten times of the normal License Fee thereafter.
- (v). The permit shall lapse automatically at the expiry of the calendar month for which it has been issued. The license shall be upto a maximum period of eleven (11) months and license fee is leviable as per the notified Schedule of Rates. Each renewal of license

shall be treated as fresh license. If the licensee requires a renewal of license, an application for renewal duly accompanied by the receipt from the NMPT on payment of an advance fee must be made and reach the NMPT seven days before the expiry of the period of the permit. Failure to apply for renewal of the permit seven days in advance before the expiry of the period of validity of the license and forwarding the required receipt for the remittance of the fees and charges will attract penal interest at the rate of 13% per annum on the accumulated arrears and shall be paid in addition to the license fee. In any case the license fee should not accumulate for more than 15 days from the date when advance license fee become payable.

- (vi). No licensee shall convert the space allotted to him / them into private bonded areas except with the written permission of the NMPT. Failure to obtain the prior written permission from the NMPT shall attract levy of penalty as follows:
 - (a). Two times the normal License Fee upto 3 months;
 - (b). Four times the normal License Fee above 3 months upto 7 months; and
 - (c). Ten times of the normal License Fee thereafter till the goods / cargo is cleared from the space allotted.
- (vii). All licensees shall deposit with the NMPT, an amount equivalent to one month's license fee on the land / space allotted to them under the license / permit as a guarantee for the due and faithful performance of the conditions set-forth in the license / permit and the deposit will be returned when the land / space is vacated finally, less any amount that may be due to the NMPT. In case, the security deposit is not refunded within 20 days from the date when land / space is finally vacated and production of documents by the licensee, the NMPT shall pay penal interest at the rate of 13% per annum on such delayed refunds.
- (viii). The NMPT shall have the right at any time to resume the possession of the land / space wholly or partly which is required by the Port / not occupied by the licensee, in which event the proportionate reduction in license fee will be allowed. In any case, the NMPT shall give a notice period of 7 days in case license is for less than six months and 15 days notice period in case license is for more than six months (but less than 11 months) about its proposed intention of resuming the land / space allotted to the licensee. In case of unauthorized occupation or encroachment, no such notice shall be issued and the port shall resume immediately. In case of such a resumption or possession of land, the licensee shall not be entitled to claim any compensation on account of such resumption or possession or to remove and take away improvements, if any, made by him on the land.

- (ix). The licensee shall have the right to appeal against resumption of possession of the land to the Board of Trustees of the New Mangalore Port Trust within a period of 30 days from the date of receipt of the Order Appealed against and the decision of the Board of Trustees of the NMPT is final in this regard.
- (x). The licensee shall agree to comply with all rules or directions issued by the NMPT from time to time. Should the licensee neglect to comply with the rules or directions, the NMPT may terminate the license.
- (xi). The licensee shall agree that all payments and expenses of whatever sort due to the Port in respect of land / space allotted to the licensee, shall be recoverable at the rates prescribed in the Scale of Rates of NMPT.
- (xii). The licensee shall comply with all rules and regulations that may from time to time be issued by the local authorities or the Inspector of Explosives, the Department of Explosive, Government of India or whomsoever concerned in relation to the storage of goods under the license / permit.

SUMMARY OF THE COMMENTS RECEIVED FROM THE USERS / USER ORGANISATIONS

F. No. TAMP/32/2006-NMPT - Proposal from the New Mangalore Port Trust for amendment to the terms and conditions for allotment of land for stacking of export cargo.

1. The comments received from the users / user organisations are summarised below:

Kanara Chamber of Commerce and Industry (KCCI) and New Mangalore Port Clearing and Forwarding Agents' Association (NMPCAFAA):

The following amendments are proposed:

- (i). Clause(C) III: The License fees or charges should be paid either from the date of receipt of the allotment letter by the licensee or occupation of the land / space in accordance with the rate laid down in the Board Scale of Rates, whichever is earlier.
- (ii). Clause (C) IV: Whenever the Licensee is occupying the port land / space and is willing to extend the license prior to its expiry, the port should allow him to extend and accept immediately the payment of fees at the scheduled rates seven days prior to the expiry of the permit / license.
- (iii). Clause (C) VII: The Port should refund the Deposit amount to the licensee within seven days of vacating the land / space occupied by him.
- (iv). Clause (C) VIII: The Chief Engineer / Traffic Manager should have the right at anytime to resume the possession of land / space wholly / partly not occupied by the licensee, but no land or space occupied by the licensee, should be resumed by the Chief Engineer/ Traffic Manager as long as the rent has been paid regularly; also the licensee should be facilitated to pay the lease rent regularly within the stipulated time.

Licensee should be given 15 days notice by the Chief Engineer / Traffic Manager to vacate the land / space rented but not occupied by him.

Central Warehousing Corporation (CWC):

- (i). The proposed amendments in terms and conditions for the allotment of port land on lease / license is for short term lease and not applicable to them since they have taken land on lease for long term.
- (ii). The land taken by them is governed by agreement with the NMPT. We, being a public warehousing provider, can store any commodity by putting up a warehouse.

- (iii). With regard to security deposit, we have paid non-refundable premium for taking land for 30 years. Therefore, further security deposit is not payable us.

Indian Oil Corporation (IOCL):

- (i). It is functioning from the NMPT land outside the compound wall on long term lease from the port. The subject proposal appears to be applicable to those who stack export cargo and not applicable to IOCL as it is covered under long term lease.
- (ii). If, however, the proposed penal provisions are applicable to us then IOCL being a public sector unit should be excluded from the applicability of proposed penal provisions of C (iii).

Export Tradelink Agencies:

It has suggested the following amendments:

- (i). Clause (C) V: The condition for renewing the license within seven days before the expiry of the period of permit after paying advance fees will be a great hardship to the licensee.

The licensee may be permitted to apply for renewal two days before the expiry of the period of permit.

- (ii). Clause (C) VIII: The condition of resuming the land/space any time will be injurious to the licensee. Atleast 15 days notice should be issued to the licensee mentioning the action proposed to be taken.
- (iii). The port has not furnished reasons for proposing the amendments with retrospective effect from 20 February 2002. The rates as well as the escalation clause should be given prospective effect. The tendency of escalating the rate should not be encouraged. The permission for escalating the rate every year should be stopped otherwise the port users may find it difficult to utilise the port area. The trade may be affected to a great extent because of the heavy lease rental.

1.2. The users namely Indian Ports Warehousing Company (IPWC), BASF, Kudremukh Iron Ore Company Limited (KIOCL), Mangalore Chemicals & Fertilizers Limited (MCFL), Alvares & Thomas (A&T), Bharat Petroleum Corporation Limited (BPCL) and Mangalore Refinery and Petrochemicals Limited (MRPL) have either no comments to offer or have no objections to the proposal of the NMPT.

2. The NMPT has responded to the comments furnished by the users on its proposal. The main comments furnished by NMPT on the comments of the users are summarised below:

On the comments of the NMPCAFAA & KCCI:

- (i). The port has no comments to offer with regard to the amendment proposed by the Association to Clause C (III).
- (ii). The Clause C (IV) is relevant only when the license is not renewed since the extension of license is as per the port convenience.
- (iii). The port can refund the security deposit only after the receipt of the letter and after obtaining the NOC from the concerned department.
- (iv). As regards Clause C (VIII), it is as per the condition prescribed in the Karnataka Gazette Notification dated 14 May 1987 and 16 March 1989. Normally, the intention to take over shall follow issue of a notice but 15 days notice period suggested by the Association cannot be agreed to.

On the comments of the IOCL:

- (i). The port has allotted land on long term basis for storage to the IOCL. The proposed amendments to the terms and conditions do not apply to their case. The proposed amendments are only to ensure timely payment of all the licensees for the land allotted to them on monthly rental basis for stacking of export/import cargoes.
- (ii). The same terms and conditions will be applicable, if the land is allotted on monthly basis to the Government / Semi-Government Organisations.

On the comments of the Export Tradelink Agencies:

- (i). With reference to the amendment suggested to Clause C (V) it has clarified that, since the allotment of land on monthly basis is made at the request of the user, any intention to renew for further period has to be made before expiry of the license period by giving adequate time for processing the subject matter. Therefore, the request for renewal before two days may not be considered.
- (ii). It has reiterated that Clause C (VIII) is as per the condition prescribed in guidelines issued by the Ministry. Normally, the intention to take over shall follow issue of a notice but the period of notice cannot be agreed to 15 days.
- (iii). The proposal is submitted to TAMP for amending the terms and conditions for storing of export and import cargo on monthly basis. The rates were part of the earlier notification and hence there is no present implication. The request is therefore redundant.