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TARIFF AUTHORITY FOR MAJOR PORTS

G No.213

New Delhi

31 October, 2007

NOTIFICATION

In exercise of the powers conferred under Sections 48, 49 and 50 of the Major Port Trust Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal of the Paradip Port Trust for amendment to an agreement dated 3 August 1985 it entered into with Paradeep Phosphate Limited as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/62/2005-PPT

The Paradip Port Trust

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Applicant

ORDER

(Passed on this 12th day of October 2007)

This case relates to a proposal received from the Paradip Port Trust (PPT) for amendment to an agreement dated 3 August 1985 it entered into with Paradeep Phosphates Limited (PPL) for construction and operation of a captive berth. By letter dated 28 September 2005 the PPT filed a proposal for amendment to the said agreement and for revision of cargo and berth hire charges and introduction of minimum guarantees etc. In the proposal PPT has stated that pursuant to the dispute between PPT and PPL sequel to the revision of charges in October 1993 an arbitration proceeding was held and in the award pronounced in December 2002 the arbitrator quashed the enhancement of rates from October 1993 and ruled that rates revised by TAMP shall be effective from 1 April 1999. The port has also stated that it has subsequently filed a revision petition before the Secretary, Ministry of Law and Justice, Government of India.

2. A copy of the proposal of PPT dated 28 September 2005 was forwarded to PPL for comments. Simultaneously, PPT was requested to justify the proposed increase in rates with cost details and also to clarify why this Authority should be involved in amending the port's bilateral agreement.

3. PPT in November 2005 informed that the Arbitration Award is heavily tilted in favour of PPL and for similar activities presently undertaken by Oswal Chemicals and Fertilizers Ltd. (OCFL) [subsequently purchased by the Indian Farmers Fertilisers Cooperative Limited (IFFCO)] the tariff levied is much higher than PPL.

4. In its reply, PPL has, *inter alia*, stated that (i) the agreement of 1985 was executed contemplating perpetuity as tariff can be changed only as per mutual agreement, (ii) tariff of 1985 itself is higher than the present rates prevailing at many other Indian Ports and (iii) there could be only nominal fixed charges covering berth hire and wharfage on monthly or annual basis which should be fixed by TAMP specifically for PPL captive berth.

5. In December 2005 PPT was once again requested to justify the proposed increase in rates with cost details and to comment on the correct procedure involved in amending a bilateral agreement. PPT replied that the cost statements for handling cargo in the captive berth of PPL are included in the proposal for comprehensive revision of its scale of rates. The port also opined that amendments to bilateral agreements would require approval of GOI as well as TAMP as was followed in respect of OCFL in 1999.

6. It is a fact that this Authority passed an Order in 1998 fixing the tariff for the fertilizer berth II taken over on lease by OCFL and incorporated the details in the SOR of PPT. At that time there was no flexibility available to the Port in levying the rates so fixed. The situation has since changed and presently the rates prescribed by this Authority are ceiling levels and the ports, if they so desire, can levy lower rates or allow higher rebates and discounts. It has now been decided that (i) this Authority would accord approval to cost based rates for use of different facilities and include them in the Scale of Rates of the Ports allowing them the liberty to operate within the ceiling so fixed and (ii) except in the cases of authorization under Section 42 of the MPT Act, 1963, the TAMP will not take up individual cases of bilateral agreements which the ports may enter into with other

organizations for allotment of berths since cost based rates will have general application and it is not relevant whether the berth is allotted to a specific organization for its exclusive use or whether it is managed by the port on common user basis.

7. In July 2006 PPT was informed about the stand taken by this Authority as detailed in para 6 above. The port was again requested to furnish cost justification for the charges to be levied for the two captive berths so that the differential rates proposed for them can be analysed while processing the general revision proposal.

8.1. A joint hearing on the port's proposal was held on 4 June 2007 at Paradip Port Trust where the representatives of PPT and PPL participated. There it came to the notice of this Authority that litigation is pending before the Hon'ble Orissa High Court and an interim Order staying the operation of the Arbitration Award has been passed by the Court. PPL also raised a doubt as to whether the Arbitrator's decision relating to TAMP fixing post 1999 rates can be implemented now in view of PPT challenging the Arbitration Award. PPT was hence requested to obtain legal opinion on the following issues:

- (i). The decision conveyed earlier by TAMP to PPT that it will not go into individual agreements but will only prescribe ceiling rates in the Scale of Rates.
- (ii). The effect of the stay order of the Orissa High Court on the proposal of PPT for amendment to the agreement it entered with PPL and revision of the tariff.

8.2. On the above PPT has informed that after necessary consultation with PPL it will submit a separate proposal on the charges to be levied on the cargo of PPL handled at Fertiliser Berth No.1. Since the charges to be levied on the cargo of PPL are, *inter alia*, covered in this Authority's Order dated 12 October 2007 in the matter of general revision of the SOR of PPT (in case No.TAMP/60/2005-PPT) the port's proposal dated 28 September 2005 has now become superfluous and, therefore, the case is treated as closed.

(A.L. Bongirwar)
Chairman