

(Published in Part - III Section 4 of the Gazette of India, Extraordinary)

TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 13

New Delhi,

03rd February 2005

NOTIFICATION

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal received from the Visakhapatnam Port Trust (VPT) for levy of charges for the services of Pilot and Pilot launches provided for dredging operations in Visakhapatnam Port as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/36/2004 - VPT

Visakhapatnam Port Trust (VPT)

Applicant

ORDER

(Passed on this 20th day of January 2005)

This case relates to a proposal received from the Visakhapatnam Port Trust (VPT) for levy of charges for the services of Pilot and Pilot launches provided for dredging operations in Visakhapatnam Port.

2.1. The main points highlighted in the proposal are as follows:

- (i). The (then) Ministry of Shipping has approved private participation of the consortium led by M/s. Gammon India Ltd. for construction, operation and maintenance of EQ-8 and EQ-9 berths. The consortium has formed a Special Purpose Vehicle named Vizag Seaport Limited (VSL).
- (ii). The VSL had deployed its own tugs and barges for dredging purpose. During the course of dredging operation, the tugs and barges were shifted to roads for dumping the dredged material in the approved dumping area. For dredging purpose, the services of Port's Pilot and Pilot launch were utilised. Services of tugs and mooring and unmooring crew were not, however, availed.
- (iii). Generally, dredging operations of such nature are carried out either by the port or by Dredging Corporation of India Ltd. (DCI) on behalf of the port; and the DCI is exempted from payment of such charges under dredging contract. This is the first time dredging activity is carried out by the BOT operator.
- (iv). The Pilotage fee prescribed in its Scale of Rates is for a composite service covering inward and outward pilotage, one shifting, provision of necessary tugs and mooring crew, etc. Since no provision exists to collect charges for Pilot and Pilot launches separately, it had raised the bill for minimum pilotage charge (i.e. Rs.17088 for both inward and out movements) on the VSL for the services utilised in the month of November 2003. This was, however, contested by the VSL. The request of the VSL was examined and accordingly the Board of Trustees resolved to fix rates for the services of pilot and pilot launches etc., provided for shifting of tugs and barges of VSL from dredging point to dumping ground and vice versa, w.e.f. 16 September 2003 subject to the approval of the TAMP.
- (v). This activity may not be regarded as an one time nature recognising the participation of private sector in respect of port developmental projects. It has, therefore, requested this Authority to approve separate tariff for the said operation.

2.2. The VPT has requested to approve insertion of following tariff in its Scale of Rates as item No.C.1 under item No. C of Section 2.2. pilotage fees in respect of services of pilot and pilot launches provided to the VSL for dredging operations at EQ-8 and EQ-9:

Pilot services per each movement	:	Rs.900/- per head
Pilot Launch hire charges	:	Rs.2950/- for first two hours and thereafter Rs.1475/- per hour or part thereof

2.3. The VPT has sought approval of the proposed rates with retrospective effect from 16 September 2003.

3.1. In accordance with the consultative procedure prescribed, the VPT proposal was forwarded to the Vizag Seaport Limited (VSL) and concerned user organisations seeking their comments.

3.2. The comments received from the VSL were forwarded to the VPT as feedback information. In response the VPT has furnished its observations.

4.1. Based on a preliminary scrutiny of the proposal, the VPT was requested to furnish additional information / clarification on various points such as the basis and justification of the proposed rate, detailed break up of the cost elements, reasons for considering 250 working days per annum for arriving at the proposed rate, etc.

4.2. In response to the queries raised by us, the VPT has furnished following additional information / clarifications:

- (i). A detailed computation of the proposed rates for pilot launch indicating break-up of the operating cost is furnished.
- (ii). In the existing SOR a composite pilotage fee is prescribed including the services of ports pilots, towage, tug mooring and unmooring charges and one shifting charge within the same harbour, however, in the general revision proposal filed by it, the pilotage fee is proposed to be unbundled and separate fee is proposed for inward, outward and internal movement.
- (iii). The rate of pilot launch hire charge existed in the SOR prior to 2001. Since the pilot launch was not hired in the past few years, the relevant tariff item was deleted from the SOR of 2001.
- (iv). It has agreed to extend the proposed rate to all similar cases in future.
- (v). Since the VPT is following historical method of depreciation but, not on written down value, the original capital cost has been taken for computation of return on investment.
- (vi). Since indirect costs are absorbed, the incidental charges and supervision charges have been considered as percentage basis. It has agreed that management and general overheads are compounded on the incidental and supervision charges but the increase is negligible.

5.1. A joint hearing in this case was held on 6 December 2004 at the VPT premises. At the joint hearing the VPT and the VSL have made their submissions.

5.2. At the joint hearing, the VPT agreed to reduce the proposed rate of launch hire charges to Rs.2000/- per block of two hours. The unit of levy was vehemently opposed by the VSL who demand hourly rates. The VPT has, therefore, advised to discuss the proposal further with the VSL and furnish a mutually agreed (revised) proposal.

6.1. Accordingly, the VPT has convened a meeting with the VSL on 20 December 2004 and filed a mutually agreed proposal. The revised rates proposed by the VPT are as follows:

Sr. No.	Particulars	Amount (in Rs.)
(i).	Hire charge for pilot launch for movement of loaded barge from inner harbour to designated area (OII)	Rs.2034/- per movement
(ii).	Hire charge for pilot launch for completion of movement of empty barge to designated dredging area in the inner harbour	Rs.2034/- per movement.
(iii).	Pilot services	Rs.900/- per movement per head

6.2. The VPT has also furnished a revised cost statement in support of the revised rate. In the revised cost statement incidental and supervision charge earlier considered @ 35% on the repair cost and on the staff cost has been deleted and the number of working days has been increased to 310 as against 250 days considered earlier.

6.3. The VPT has also attached a copy of the VSL letter endorsing its revised proposal. The VSL has confirmed its agreement to the revised rate proposed by the VPT.

7. 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 at the joint hearing will be sent separately to the relevant parties. These details are also available at our website www.tariffauthority.org.

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

- (i). The proposal arises due to the fact that no separate rate is prescribed specifically for hire of pilot and pilot launch in the existing Scale of Rates of the VPT since the port offers a composite pilotage service.
- (ii). The main objection of the VSL was with reference to the rate proposed by the VPT for hire of pilot launch. As decided at the joint hearing, the VPT and VSL have discussed among themselves and presented a mutually agreed proposal. Not only the rates are reduced from the level proposed earlier, but also the unit of charging has been rationalised in the revised proposal. The revised proposed rates are for each movement which appears to be logical when compared to the earlier proposed unit of charging.

Since it is a mutually agreed proposal and this tariff arrangement is not for a regular operation, it is not found necessary to make an in-depth analysis of the cost statement filed by the VPT. This Authority is inclined to approve the revised rate proposed by the VPT as mutually agreed between both the parties.

- (iii). The VPT has conceded that application of this tariff arrangement will not be restricted in the case of the VSL only but will be followed in all similarly placed cases. The wordings of this tariff item in the Scale of Rates is modified to reflect this general position.
- (iv). The VPT has sought retrospective revision of rates with effect from 16 September 2003. This Authority does not approve retrospective revision of rates unless extra ordinary circumstances emerge warranting any exceptional treatment. Procedural lapse on part of a port to come up with a proposal in time cannot be an extraordinary circumstance.

The VPT cannot deny that it was not aware of the services it had to provide in this case and the tariff arrangement available in the prevailing Scale of Rates. It is not unreasonable to expect a port to take advance action for modification of tariff or introduction of any new rates instead of presenting fait accompli situation before the regulator.

This Authority, therefore, decides to amend the Scale of Rates of VPT in this case prospectively. This does not mean this Authority is not in favour of providing relief to VSL. It is for the VPT to decide whether it wants to extend retrospectively the principle set in this case.

9.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves insertion of the following rates in the existing Scale of Rates of the VPT as item number C (I) under (C) of Section 2.2. Pilotage fee:

“C (I). Rates for the services of Pilot and Pilot launches provided for shifting of barges, etc., from dredging points in the inner harbour to dumping ground.

Sr. No.	Particulars	Ceiling rate (in Rs.)
(i)	Hire charge for pilot launch for movement of loaded barge from Inner Harbour to designated area (OII)	Rs.2034/- per movement
(ii).	Hire charge for pilot launch for completion of movement of empty barge to designated dredging area in the Inner Harbour	Rs.2034/- per movement.
(iii).	Pilot services per head	Rs.900/- per movement Per head

9.2. The amendment to the Scale of Rates will come into effect 30 days from the date of notification of this Order in the Gazette of India.

(A.L. Bongirwar)
Chairman