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**TARIFF AUTHORITY FOR MAJOR PORTS**

G. No. : 150

New Delhi, 24 November 2005

**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 inserts a conditionality in the Scale of Rates (SOR) of the Visakha Container Terminal Private Limited as in the Order appended hereto.

**( A.L. Bongirwar )**  
Chairman

# TARIFF AUTHORITY FOR MAJOR PORTS

Case No. TAMP/31/2005 – VCTPL

## ORDER

(Passed on this 7<sup>th</sup> day of November 2005)

This Authority had passed an Order on 30 August 2005 revising the Scale of Rates (SOR) of the Visakha Container Terminal Private Limited (VCTPL) for its operations in Visakhapatnam Port Trust (VPT). This Order along with the approved Scale of Rates (SOR) was notified in the Gazette of India on 22 September 2005 vide Gazette No. 134.

2. The revised guidelines for tariff fixation specify that users should not be required to pay charges for delays beyond the reasonable level attributable to the port. Accordingly, this Authority is guided by this principle while prescribing conditionalities in the Scale of Rates of port trusts and private terminal operators. In respect of levy of berth hire, it has been stipulated in the Scale of Rates of Vizag Seaport Limited (VSPL), South West Port Limited (SWPL), Cochin Port Trust (COPT) and Paradip Port Trust (PPT) that berth hire should not be charged for the period when loading/unloading operations cannot be carried out due to non-availability of the shore cranes/mechanical handling system due to breakdown or any other reasons attributable to the port/operator. In a recent Order passed in the case of India Gateway Terminal Private Limited (IGTPL) where the berth hire is collected by the landlord port, a conditionality has been imposed to require the private operator to grant rebate equivalent to berth hire accrued during the period of idling of vessels on account of reasons attributable to the operator. Such a conditionality was inadvertently not included in the recently approved SOR of the VCTPL. The VCTPL was explained the background and given an opportunity to express its views on incorporation of a similar provision in its SOR.

3. The VCTPL has made its submissions against incorporation of such a conditionality in its SOR. Analysis of the response of VCTPL reveals the following position:

(i). Comments of VCTPL:

Berth hire is not an item of revenue for VCTPL since this charge is collected by the VPT as per the terms of the License Agreement. The arrangement at the Vizag Seaport Limited (VSL) and South West Port Limited (SWPL) is different from the VCTPL. The berth hire is collected by the VSL and SWPL at their respective terminals. Since the VCTPL is not entitled to not earn any revenue by way of berth hire, the question of allowing rebate does not arise at all.

Analysis:

*Incorporating the said provision is in line with the provisions of the revised tariff guidelines. SWPL and the VSL levy berth hire as per the terms of LA as rightly stated by the VCTPL, hence the relevant provision prescribed in their SOR prohibits them from levying berth hire for that period. The VCTPL does not levy berth hire charges is not very relevant from the point of view of users. They pay berth hire charges to VPT for occupation of the berth operated by VCTPL even for the period when no vessel operation takes place. It will not be reasonable to require VPT not to levy berth hire charges if a vessel idles at the container berth for reasons attributable to VCTPL. Keeping in view the overall objective of providing relief to a vessel in such*

*situation, the VCTPL has to allow rebate to the extent of berth hire charges paid by vessels for such period of idling attributable to it. Insofar as application of the principle is concerned, there is no differentiation is made by this Authority. The modality of operating the principle has to differ in view of differences in the Licence Agreements.*

(ii). Comments of VCTPL:

Since the VCTPL is contractually bound to achieve productivity parameter stipulated in the LA and the same has been achieved by it so far, there is no need for incorporating a separate conditionality as suggested by TAMP.

Analysis:

*This argument is not fully relevant to the issue at hand. Nevertheless the fact that the operator has achieved the minimum productivity norms as per the terms of LA cannot be a reason for requiring users to bear charges even for the period of delay attributable to the operator.*

(iii). Comments of VCTPL:

Allowing rebate equivalent to berth hire charge for the reasons stated will lead to direct loss from its legitimate earnings and will have a negative impact on the financials. Giving rebate in berth hire for reasons attributable to the terminal without considering the standing charges incurred by the terminal in terms of equipment, manpower, etc., becomes a one sided benefit to shipping line.

Analysis:

*The statement made by the VCTPL only reflects its side of the story. It has not explained why its users should bear the burden for delays attributable to the Terminal Operator.*

4. In the result, and for the reasons given above, this Authority inserts the following conditionality in the Scale of Rate of the VCTPL as Note number 7 in Schedule 2 – General:

“In case a vessel idles due to non-availability or breakdown of the shore based facilities of VCTPL or any other reasons attributable to the VCTPL, rebate equivalent to berth hire charges payable by that vessel to VPT which accrued during the period of idling of vessel shall be allowed by VCTPL.”

**(A.L. Bongirwar)**  
Chairman