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**Tariff Authority for Major Ports**

G No. 167

New Delhi,

16 August 2007

**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 disposes of the proposal from the Visakha Container Terminal Private Limited (VCTPL) for levy of charges for use of terminal facilities by non-container vessels as in the Order appended hereto.

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

**TARIFF AUTHORITY FOR MAJOR PORTS**

Case No. TAMP/12/2007 - VPT

**Visakha Container Terminal Private Limited - - -**

**Applicant**

**ORDER**

(Passed on this 7<sup>th</sup> day of August 2007)

The Visakha Container Terminal Private Limited (VCTPL) had filed a proposal for review of its Scale of Rates in February 2007. It had proposed to continue with the existing Scale of Rates but had proposed to introduce some new tariff items for miscellaneous services. One such tariff item proposed by the VCTPL was for levy of Rs. 8000/- per hour or part thereof from non-container vessels for use of the terminal facilities

1.2. At the request of trade, a few non-container vessels were allowed to be berthed at its terminal last year with the consent of VPT for various miscellaneous activities such as minor repairs, disembarkation/embarkation of stores/passengers, berthing of offshore supply vessels, fumigation, etc. The License Agreement (LA) allows the licensee to handle non-container cargo vessels at its berth subject to consent of VPT. The LA stipulates sharing of 50% of wharfage charge prescribed in the Scale of Rates of VPT between the licensor and licensee in respect of non-container vessels handled at the terminal.

1.3. The VCTPL has clarified that most of the non-container vessels berthed at its terminal last year did not involve any cargo handling operations and hence there was no wharfage accrual to the VCTPL from such vessels.

Permitting such activities at the container terminal would be viable only if the terminal operator is suitably compensated towards cost involved for access of men, materials and vehicles, enhanced security and vigilance in the water front area including random boat patrol, illumination, house keeping and maintenance of various facilities, access to canteen and medical facilities, conservancy and manpower for supervision of terminal. In this backdrop, the VCTPL has proposed to levy Rs.8000 per hour from non-containers vessels for availing the facilities at its terminal.

1.4. In the absence of any specific rate in its Scale of Rates, the VCTPL has collected Rs. one lakh per day or part thereof from non-container vessels availing land side facilities at its terminal as mutually agreed between the concerned vessel agents and VCTPL. Since some vessels did not stay for the full day, some section of the trade suggested an hourly rate. Hence, hourly rate of Rs. 8000 (albeit higher than the pro-rata working) is proposed in order to benefit the trade in case vessels stay for a shorter duration. The proposed tariff is unlikely to generate much revenue and hence is proposed on an ad hoc basis.

2. Most of the users / user associations have objected the proposed tariff item. The land lord port Visakhapatnam Port Trust (VPT) has also strongly objected the proposed levy on the grounds that it is not as per the terms of the LA as the licensee cannot handle any non-container vessels without its permission.

3. A joint hearing was held on 12 June 2007 with reference to the proposal of VCTPL for review of its Scale of Rates. The VPT was advised to convene a meeting with the relevant user groups and the VCTPL to resolve the differences and attempt to arrive at a consensus position. The VCTPL was advised to file a revised proposal on this issue based on cost justification or on the basis of the consensus reached, which would be decided separately as and when the revised proposal is filed by the VCTPL. As decided in the joint hearing, this particular tariff item was de-linked from the main proposal, which is already disposed through the Order passed on 28 June 2007.

4.1. The VCTPL has accordingly, filed a revised proposal for levy of tariff for non-container vessels. It has informed that a meeting was convened by the VPT on 26 June 2007 with the Visakhapatnam Steamship Agents Association (VSAA) and a consensus was arrived at for levy of following tariff from non-container vessels:

2.4. Charges for use of Terminal facilities by vessels

The charges shall be applicable for non-container vessels i.e. vessels either handling non-compatible cargo or for vessels not handling any cargo at all, berthed at VCT.

GRT	Proposed rates
Upto 10000	Rs. 2100 per hour
10001 to 30000	Rs. 0.10 per GRT per hour with minimum of Rs. 2100 per hour
30001 and above	Rs. 0.16 per GRT per hour.

4.2. The VCTPL has requested this Authority to approve the proposed tariff based on consensus obtained from the concerned users.

5.1. The Visakhapatnam Steamship Agent's Association has confirmed acceptance to the tariff proposed by VCTPL.

5.2. The VPT confirmed that the meeting was convened with the VSAA and the VCTPL to discuss this tariff item. The port has made the following submissions with reference to this proposal:

- (i). The tariff proposed for use of terminal facilities like access control of visitors / materials (excluding cargoes) and passenger vehicles, enhanced security, illumination, house keeping, access to canteen and medical facilities, conservancy, etc., is not in line with the recommendations of the Directing Group on simplification and rationalisation of port procedures. In the said report, the Directing Group has recommended integration of such charges for incidental facilities either with wharfage or berth hire to the maximum possible extent.
- (ii). However, since the trade has given consent to the proposal, it has no objection to the proposed levy in case of the vessels which are not covered under the License Agreement.
- (iii). It has clarified that the proposed charge should not be made applicable to non-container vessels handling compatible cargo (e.g. break bulk, steel, project cargo etc.), which are covered under License Agreement.

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

- (i). The proposal of the Visakha Container Terminal Private Limited (VCTPL) is to levy a fee from non-container vessels berthed at its terminal for various reasons such as minor repairs, disembarkation/embarkation of stores/passengers, berthing of offshore supply vessels, fumigation, etc., when such vessels do not handle any cargo.

The License Agreement signed between the Visakhapatnam Port Trust (VPT) and the VCTPL allows the VPT to designate other than container vessels at the berths operated by VCTPL, subject to certain conditions. In the event, the VCTPL is entitled to collect wharfage as per the SOR of the VPT, and retain 50% thereof.

- (ii). The VCTPL has reported that most of the non-container vessels that came to its terminal last year had no cargo for handling and hence there was no accrual of wharfage to VCTPL from these vessels though they availed the land side facilities at its terminal.

It is relevant here to point out that the approach adopted by this Authority does not require a vessel to pay a separate tariff towards the general landward facilities. A vessel pays only vessel related charges which are determined based on the cost of relevant activities which in turn account for the apportioned management and general overheads. The recommendations of the Directing Group referred by VPT are also more or less on these lines.

An exceptional position emerges in this case as the seaward services are provided by the landlord port trust which collects vessel related charges and the landward facilities at the berths in question are developed by the private terminal operator. When

cargo/container transfer takes place, the terminal operator levies charges which can be reasonably said to provide for recovery of his overheads. When no such ship-shore operation takes place, as in the cases cited by VCTPL, it is unreasonable to require the private operator to allow the general facilities of his terminal to be used free of cost. Thus, in such a situation, a prima facie case emerges for requiring the vessel to compensate the terminal operator.

- (iii). It is significant to note that the proposal is not for separate recovery of cost for general facilities from container vessels, which is the core business of the operator. The cost for general facilities is already factored into while prescribing the tariff for containers. The proposed tariff is only to recover charges from those non-container vessels which avail the general land side facilities of the terminal without any consideration to the operator. The income from the proposed tariff, though it is reported to be insignificant, will reduce the burden on container trade. In this context, it is recalled that the existing container tariff at VCTPL does not fully recover the cost and the terminal has huge surplus capacity.
- (iv). While there may be merit in allowing the operator some compensation for use of its general facilities, the appropriateness of collecting the charges on the basis of GRT of a vessel is not clear. The tariff proposed by the VCTPL is not for vessel related service but to recover the general overhead expenses incurred by the operator. These expenses will generally be fixed in nature and may not have any link with varying size of the vessels.
- Nevertheless, since the concerned user Association has agreed to the proposed levy and even the land lord port has conveyed no objection to the proposed structure, this Authority does not like to effect any suo motu change at this juncture.
- (v). The revised proposed rate is not cost based. It is based on consensus. This Authority, therefore, approves the proposed rate without insisting upon cost analysis.
- (vi). The VCTPL has reported that it has levied charges on ad hoc basis on some of the non container vessels berthed at its terminal earlier. The VCTPL has not fully satisfied the conditions prescribed in the revised tariff guidelines for introducing ad hoc tariff. The rate introduced by VCTPL is not derived from the tariff prescribed in its existing Scale of Rates. As no prior consent of users was obtained, this Authority does not like to recognise payment made by the relevant ships, as their consent to the ad hoc rate. While disposing of the general revision proposal of VCTPL, this Authority held that recovery of charges, if any, made by VCTPL on this account is subject to adjustment, based on the final rate to be approved. The earlier decision is reiterated and the VCTPL is advised to adjust its billing retrospectively.

7. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the tariff proposed by the VCTPL for use of terminal facilities by non-container vessels i.e. vessels either handling non-compatible cargo or for vessels not handling any cargo at all by inserting the following Schedule 2.4. under Section II of its existing Scale of Rates:

**“2.4. Charges for use of terminal facilities by vessels**

The charges shall be applicable for non-container vessels i.e. vessels either handling non-compatible cargo or for vessels not handling any cargo at all, berthed at Visakha Container Terminal.

GRT	Rates
Upto 10000	Rs. 2100 per hour
10001 to 30000	Rs. 0.10 per GRT per hour with minimum of Rs. 2100 per hour
30001 and above	Rs. 0.16 per GRT per hour.

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