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Tariff Authority for Major Ports

G.No. 168

New Delhi

16 August 2007

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 disposes of the proposal of the Visakhapatnam Port Trust (VPT) for levy of movement priority charges for berthing/sailing of container vessel as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/10/2007 – VPT

Visakhapatnam Port Trust

- - -

Applicant

ORDER

(Passed on this 7th day of August 2007)

This case relates to a proposal dated 1/2 February 2007 received from the Visakhapatnam Port Trust (VPT) for levy of movement priority charges for berthing / sailing of container vessels.

- 2.1. The main points made by the VPT in its proposal are summarised below:
- (i). The container trade has been requesting to introduce movement priority to all container vessels at the time of berthing / sailing in order to facilitate berthing / sailing of container vessels on priority so as to reduce the stayal of vessels and for quick turn round of the container vessels at VPT.
 - (ii). This matter was discussed with trade on 20 November 2006. The Visakhapatnam Container Lines Association (VCLA) and the Visakhapatnam Steamship Agents' Association (VSAA) have given their consent to pay the following rates on an adhoc basis for according movement priority to container vessels:
 - (a). Additional charge at 7.5% of applicable pilotage fee for each movements i.e. either berthing or sailing. The user Associations have submitted that requisition for according priority would be given by the concerned steamer agent as and when priority is required. Whenever priority is sought, pilot should board the vessel within 3 hours of its arrival into port limits / hosting 'S' flag or sailing signals. In case of delay in boarding the vessel by pilot beyond 3 hours, that particular movement would not attract any priority charges while the vessel will be accorded priority movement.
 - (b). Alternatively, to levy additional charge at 10% of applicable pilotage fee per call as a separate charge for all container vessels towards priority charge for berthing and sailing of a vessel. However, in case pilot cannot board the vessel within 3 hours, the port may consider to refund the additional charges of 10%.
 - (iii). It has furnished a copy of the joint consent letter dated 27 November 2006 given by the VCLA and VSAA in support of its proposal.
 - (iv). The port has decided to accord priority for berthing / sailing to all container vessels duly levying movement priority charges @ 10% of the applicable pilotage fee on an *ad hoc* basis for each call in respect of container vessels with effect from 10 January 2007. It has furnished a copy of the circular dated 5 January 2007 issued to the trade in this regard.

2.2. The VPT has requested this Authority to approve the proposed additional fee @ 10% of applicable pilotage fee for according priority for berthing / sailing to container vessels for each call.

3. In accordance with the consultative procedure prescribed, the proposal of VPT was forwarded to the Visakha Container Terminal Private Limited (VCTPL) and concerned users / user organisations for their comments. None of the users / user organisations consulted in this case have furnished their comments on the proposal under reference except the private terminal operator VCTPL. A copy of the comments received from the VCTPL was forwarded to the VPT as feedback information. The VPT has not furnished its observations on the comments of the VCTPL.

4. Based on a preliminary scrutiny of the proposal, the VPT was requested to furnish information / clarifications on a few points. The VPT has furnished the requisite information / clarifications. A summary of the queries raised by us and the clarifications furnished by the VPT are tabulated below:

Sr. No.	Queries raised by us	Response of the VPT																																								
(i).	The existing Scale of Rates (SOR) of the VPT already prescribes additional berth hire charge for according priority berthing to any vessel. In view of this, explain the different circumstances under which the proposed additional pilotage fee and the priority berthing charges would become leviable.	<p>(a). Vessels are ordinarily berthed in the order of their arrival i.e. 'first come first serve' basis. But, certain vessels are accorded priority berthing / ousting priority in accordance with the declared berthing policy.</p> <p>(b). Priority berthing means preferring a vessel to a senior vessel in allotment of a berth whereas ousting priority berthing means shifting of even a working vessel to allot berth to a vessel. Vessels berthed on priority/ousting priority are liable to pay applicable additional berth hire charges as per provisions in the Scale of Rates (SOR).</p> <p>(c). In case of container vessels, which are berthed at BOT berths (VCPTL), there is no issue of priority/ousting priority berthing. But for carrying out the shipping movements, the order of seniority of readiness for berthing/sailing of the vessel is taken into account. As a consequence, at times abnormal pre-berthing and post-completion detention is caused to container vessels, awaiting the pilot and tugs for berthing and unberthing, though their stay at the berth for loading/unloading operations is for a very short period.</p> <p>(d). Hence, the trade has been representing for a long time to accord priority to container vessels at the time of berthing/unberthing. After prolonged discussions with the trade and Container Lines, it has decided to accord priority to container vessels on payment of priority charges while carrying out shipping movements for their berthing/unberthing.</p>																																								
(ii).	(a). Please confirm whether the port has sufficient number of pilots for according priority to all container vessels in view of the proposed conditions prescribing time limit for the pilots to board the vessel. Also, confirm whether the priority accorded to container vessels will not affect the movement of other vessels.	The port has sufficient number of pilots for according priority to all container vessels. However, at times the priority accorded to container vessels might affect the movement of other vessels.																																								
	(b). Furnish category-wise details of vessels waiting for pilot to board the vessel for the last 3 years.	<p>It has furnished a statement showing time lost on account of earlier movements and awaiting tide for each category of vessels. The general position is as follows:</p> <table border="1" data-bbox="703 1664 1437 2038"> <thead> <tr> <th data-bbox="703 1664 794 1727">Sr. No.</th> <th data-bbox="794 1664 1034 1727">Particulars</th> <th data-bbox="1034 1664 1166 1727">2004-05</th> <th data-bbox="1166 1664 1299 1727">2005-06</th> <th data-bbox="1299 1664 1437 1727">2006-07</th> </tr> </thead> <tbody> <tr> <td data-bbox="703 1727 794 1760">(i)</td> <td data-bbox="794 1727 1034 1760">No. of vessels</td> <td data-bbox="1034 1727 1166 1760">1805</td> <td data-bbox="1166 1727 1299 1760">2071</td> <td data-bbox="1299 1727 1437 1760">2052</td> </tr> <tr> <td data-bbox="703 1760 794 1823">(ii)</td> <td data-bbox="794 1760 1034 1823">Avg. pre berthing time (in hrs)</td> <td colspan="3" data-bbox="1034 1760 1437 1823"></td> </tr> <tr> <td data-bbox="703 1823 794 1856">(a)</td> <td data-bbox="794 1823 1034 1856">Earlier movement</td> <td data-bbox="1034 1823 1166 1856">0.28</td> <td data-bbox="1166 1823 1299 1856">0.38</td> <td data-bbox="1299 1823 1437 1856">1.48</td> </tr> <tr> <td data-bbox="703 1856 794 1890">(b)</td> <td data-bbox="794 1856 1034 1890">Awaiting tide</td> <td data-bbox="1034 1856 1166 1890">0.13</td> <td data-bbox="1166 1856 1299 1890">0.07</td> <td data-bbox="1299 1856 1437 1890">0.17</td> </tr> <tr> <td data-bbox="703 1890 794 1975">(iii)</td> <td data-bbox="794 1890 1034 1975">Avg. post completion delay (in hrs)</td> <td colspan="3" data-bbox="1034 1890 1437 1975"></td> </tr> <tr> <td data-bbox="703 1975 794 2009">(a)</td> <td data-bbox="794 1975 1034 2009">Earlier movement</td> <td data-bbox="1034 1975 1166 2009">0.58</td> <td data-bbox="1166 1975 1299 2009">1.28</td> <td data-bbox="1299 1975 1437 2009">1.83</td> </tr> <tr> <td data-bbox="703 2009 794 2038">(b)</td> <td data-bbox="794 2009 1034 2038">Awaiting tide</td> <td data-bbox="1034 2009 1166 2038">0.40</td> <td data-bbox="1166 2009 1299 2038">0.35</td> <td data-bbox="1299 2009 1437 2038">0.34</td> </tr> </tbody> </table>	Sr. No.	Particulars	2004-05	2005-06	2006-07	(i)	No. of vessels	1805	2071	2052	(ii)	Avg. pre berthing time (in hrs)				(a)	Earlier movement	0.28	0.38	1.48	(b)	Awaiting tide	0.13	0.07	0.17	(iii)	Avg. post completion delay (in hrs)				(a)	Earlier movement	0.58	1.28	1.83	(b)	Awaiting tide	0.40	0.35	0.34
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(iii)	<p>(a). As per Clause 2.17.3. of the revised tariff guidelines, the <i>ad hoc</i> rate to be operated must be based on the existing notified rate and must be mutually agreed upon by port and the concerned users. Though the proposed <i>ad hoc</i> rate is mutually agreed upon by the port and the two user Associations, namely Visakhapatnam Container Lines Association (VCLA) and the Visakhapatnam Steamship Agents' Association, it is not found to be based on the existing notified rate for comparable service. What would be more relevant is to ensure that other segments are not unduly affected due to the privilege extended to a particular category; and, in this regard, the views of such users are also to be taken into account.</p>	<p>(a). Ad hoc rate proposed was mutually agreed between the port and the concerned users. This rate is not based on the existing notified rate and is a new tariff item. It has furnished the cost benefit analysis for according priority movement to this category of vessels as given below:</p> <p>(i) Basic data considered</p> <table border="1" data-bbox="703 405 1342 797"> <tr> <td>Charter hire for a 1500 TEU container vessel.</td> <td>US\$ 10000 per day</td> </tr> <tr> <td>Average GRT of the container vessels as per statistical data for 2005-06.</td> <td>13,149 tonnes</td> </tr> <tr> <td>Rate of pilotage fee as per existing tariff.</td> <td>US\$ 0.3096 per GRT (for inward & outward movements)</td> </tr> <tr> <td>Pilotage charges.</td> <td>US\$ 4071</td> </tr> <tr> <td>Estimated savings in vessel standing hours</td> <td>4 hours</td> </tr> </table>	Charter hire for a 1500 TEU container vessel.	US\$ 10000 per day	Average GRT of the container vessels as per statistical data for 2005-06.	13,149 tonnes	Rate of pilotage fee as per existing tariff.	US\$ 0.3096 per GRT (for inward & outward movements)	Pilotage charges.	US\$ 4071	Estimated savings in vessel standing hours	4 hours
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	<p>(b). Explain the basis of arriving at proposed rate of 10% of pilotage fee for movement priority charges and justify it with reference to additional cost incurred for according priority to this category of vessels.</p>	<p>(ii) Benefits</p> <table border="1" data-bbox="703 925 1437 1010"> <tr> <td>Saving in standing cost of a vessel for 4 hours if priority movement is given.</td> <td>Charter hire x 4/24 = US\$ 1667</td> </tr> </table> <p>(iii) Costs</p> <table border="1" data-bbox="703 1070 1437 1305"> <tr> <td>Priority movement charges proposed @ 10% of pilotage charges.</td> <td>US\$4071x10% =US\$407</td> </tr> <tr> <td>Benefit over cost to the vessel owner. (i.e. approximately 75% of savings)</td> <td>US\$1667- US\$407 = US\$ 1260</td> </tr> <tr> <td>Benefit to the port is the proposed amount of priority movement charges.</td> <td>US\$ 407</td> </tr> </table> <p>At the time of general revision of Scale of Rates, it was proposed to have priority movement charges at 25% of pilotage fee which was, however, deferred. Now, at the instance of the trade, the priority movement charges are proposed at 10% of pilotage fee.</p>	Saving in standing cost of a vessel for 4 hours if priority movement is given.	Charter hire x 4/24 = US\$ 1667	Priority movement charges proposed @ 10% of pilotage charges.	US\$4071x10% =US\$407	Benefit over cost to the vessel owner. (i.e. approximately 75% of savings)	US\$1667- US\$407 = US\$ 1260	Benefit to the port is the proposed amount of priority movement charges.	US\$ 407		
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(iv).	<p>Given the resource constraints faced by major ports particularly in respect of providing towage and pilotage services, this Authority generally does not view favourably the arrangement to levy extra charges for jumping the pre-determined sequencing of servicing. Even the existing priority / ousting priority arrangement was initially introduced by the Government and not by this Authority. In this context, it may be clarified whether Government has issued any policy direction to the port to accord movement priority to container vessels and on levying premium therefor, at that.</p>	<p>Government has not issued any policy direction to the port to accord movement priority to container vessels. This decision was taken based on the request of the trade and in overall interest to encourage container traffic.</p>										

5. The VPT has made further submissions with reference to its proposal as summarised below:

- (i). The inner channel of the port is permissible to navigate only one movement at a time. This channel is catering to the movements of vessels in and out to and from the 19 berths of the Inner Harbour, besides catering to the movements of the Indian Navy. As a result of this, vessels are subjected to detention at roads and at berths for berthing and sailing movements. It has, therefore, taken up deepening of the Inner Channel and turning circle in a phased manner to accommodate Panamax Vessels.
- (ii). Vessels arriving at the port are allotted berths and moved on first cum first serve basis after considering priority to vessels requiring tide movement. Fertilizer vessels are given priority as per the directions of the Government. Priority for berthing of vessels exists over sailing of vessels. There is technically no possibility for simultaneous movement of vessels through the Inner Channel.
- (iii). It has employed 9 pilots and is equipped with 8 shipping tugs of capacities ranging from 30-50 tonne bollard pull. There is no shortage in strength of pilots. As such there are no instances where movement is delayed for want of pilot. However, as explained earlier, majority of the movements in and out of the port's Inner Harbour and Outer Harbour are being effected on account of earlier movements.
- (iv). It has furnished a statement to show the effect of earlier movements on sailing of container vessels is more predominant ranging from 8% to 9% of the Turn Round Time (TRT). It could also be seen that the effect of earlier movements on berthing of container vessels is on the higher side ranging to 4% - 6% of the Turn Round Time (TRT). As such the combined effect of earlier movements on the container vessels is nearly 12% to 15% of the TRT leading to incurrence of standing cost by the container vessels and consequential impact on the operating cost per TEU. This phenomenon is acting as a disincentive to the container trade. As such according priority to container vessels is justified and would help improve the TRT of container vessels and as a result would foster container trade in this region.

6.1. A joint hearing, in this case was held on 12 June 2007 at the Visakhapatnam Port Trust premises. At the joint hearing, the VCLA and the VPT made their submissions.

6.2. As decided in the joint hearing, the Visakhapatnam Port Trust (VPT) was advised to furnish cost details to substantiate its claim that the port incurs loss to the extent of 20% of the pilotage charge by according priority movement to container vessels.

6.3. The VPT had furnished the following additional information:

- (i). There are no additional costs involved to VPT in according priority movement to container vessels. But due to according priority to container vessels, the other vessels waiting for their normal turn of pilotage movement are delayed by 4 hours and as a consequence VPT berths idle for 4 hours. As a result, VPT loses its opportunity to handle cargo for the said time period.
- (ii). Considering a discharge rate of 250 tonnes an hour and average wharfage rate of 32 per tonne, the opportunity loss of wharfage will be Rs. 32,000/- (i.e. 4 hours x 250 tonnes x Rs.32 per tonne). As against this, the VPT has proposed to collect 10% of pilotage fee for according priority movement to container vessel, which amounts to Rs. 16,475/- (US\$ 407x Rs.40.48).
- (iii). The above rate has been proposed after due consultation with the trade and the BOT operator. Trade has also conveyed their consent before TAMP in the joint hearing held on 12 June 2007.

- (iv). In view of the above, it has reiterated its request to approve the proposed additional fee @ 10% of the applicable pilotage charge for each call towards movement priority in case of all container vessels.

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 will be sent separately to the relevant parties. These details will also be made available at our website <http://tariffauthority.gov.in>

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

- (i). The proposal of VPT involves a new concept of levying charges for according priority in providing a service to a particular segment of trade in preference over the other segment. The proposal does not involve the traditional cost plus approach of tariff fixing but relies heavily on the principles of value based pricing. The necessity of according priority in movement of vessel basically arises due to the congestion situation imposed by the geographical and infrastructure constraints with which the port operates. The consent expressed by the two relevant user associations to bear the additional cost may have been due to the compulsion faced by them owing to the constraints in the port.
- (ii). The VPT has reported that the proposed levy has already been introduced on an ad-hoc basis with effect from January 2007 relying upon an authorisation to introduce such levy subject to fulfillment of certain conditions given in the revised tariff guidelines of 2005. The port has admitted that the priority arrangement introduced by it may affect the movement of other vessels. Nothing is placed on record to show any serious consultation with the interest representing such other vessels before introducing the ad-hoc arrangement. Further, the proposed tariff is not derived based on the existing rates in the approved Scale of Rates but relates to the perceived gains accruing to vessels availing the benefit of priority movement. The levy does not appear to be for a new cargo or a service, but, as has been explained earlier, involves introduction of new charging concept. That being so, it would have been more appropriate for the port trust to await a formal approval of the proposed levy by this Authority instead of levying the charges forthwith under an ad-hoc arrangement.
- (iii). The VPT has clearly brought out the distinction between the priority/ousting priority berthing arrangement which is in vogue with reference to the Government instructions on this subject and the priority movement arrangement which is under consideration now. While passing its Order on the general revision of Scale of Rates of VPT in May 2001, this Authority had categorically observed that, in the context of limited availability of berthing facility at present, there would always be any number of vessels ready to pay such additional charges; and, this would give scope for exploitation of discretionary powers. Nevertheless, this Authority decided neither to approve nor dis-approve the priority berth arrangement as it was reported to be based on a Government decision. It is significant here to note that, as admitted by VPT, there is no Government policy direction on according movement priority to container vessels.
- (iv). The port, at one place, has admitted that abnormal pre-berthing and post-completion detention takes place to container vessels as they have to await pilots and tugs for berthing and un-berthing. At some other place, the port has maintained a stand that no ship movement is delayed for want of pilot. As pointed out by the Visakha Container Terminal Private Limited (VCTPL), a long term solution would be upgrading the infrastructure to meet the growing demand of the trade, and not imposing a charge for priority allocation of the resources which are in short supply. It is noteworthy that this Authority likes to encourage congestion pricing to encourage even distribution and optimum utilisation of available resources. The proposal is not towards achieving this objective. Given the

bottleneck in the infrastructure, this Authority does not endorse the approach of VPT to prefer one segment of trade at the cost of others. If the VPT is convinced that it can promote the container trade without causing additional burden to other segments, it can, however, continue to accord priority treatment to the former category of vessels.

- (v). Even if the VPT provides priority services to container vessels, the next question which arises is whether it is entitled to levy any additional charges therefor. As has been mentioned earlier, the proposed levy is not cost based, which is the recognised method adopted for determining tariff at the Major Port Trusts. The VPT has clearly declared that no additional cost is involved to the port in according priority movement to container vessels. Its initial communication justifies the proposed levy based on the savings that may accrue to a container vessel. Subsequently, the port has attempted to justify the proposed charges based on the opportunity cost arising in the context of loss of wharfage income from other segment. Prima facie, it appears that the port wants to increase its revenue from the congestion situation. This Authority does not find it appropriate to rely solely upon the cost savings to the container vessels to approve the proposed priority movement charges. If this principle is conceded in relation to the container vessels, then the logical question is why port did not allow rebate in the pilotage fee on other category of vessels which had to inevitably wait due to priority movement of container vessels. If container vessels gain in the standing cost, obviously the other category vessels incur additional standing cost. The proposal of the port does not adequately explain this position.
- (vi). While according priority movement to the container vessels can be left to the administrative decision of the VPT, this Authority does not find any merit in introducing an additional charge for according such priority.
- (vii). As has been discussed earlier, the priority movement charge is being levied by the VPT from January 2007. For the reasons explained earlier, the ad-hoc arrangement introduced by the VPT is not found to be fully in line with the revised tariff guidelines. Strictly speaking, the port should have been ordered to refund the charges levied so far. Nevertheless, recognising the fact that the concerned user associations have agreed voluntarily to pay the charges for the priority accorded, this Authority allows VPT to retain the collection made so far. The revenue generated so far will be duly accounted while considering the proposal of VPT for the next general review of its Scale of Rates. The port is advised to discontinue the levy forthwith. By way of abundant caution, it is clarified that the decision to discontinue the levy should not be seen as requiring the port not to accord the priority in movement to the container vessels, even when it becomes necessary to allow such concession on commercial consideration.

9. In the result, and for the reasons given above, this Authority does not find merit in approving the proposed levy of priority movement charges for berthing/ sailing of container vessels. The ad-hoc tariff arrangement introduced by the VPT should be discontinued immediately.

(A.L. Bongirwar)
Chairman

Summary of the comments received from the port user and arguments made in this case during the joint hearing before the Authority

F. No.TAMP/10/2007-VPT - Proposal from the Visakhapatnam Port Trust for levy of movement priority charges for berthing / sailing of container vessel.

1. The comments received from the VCTPL are summarised below:
 - (i). Priority movement is being accorded to all container vessels at the time of berthing/sailing on an adhoc basis for each call w.e.f. 10 January 2007. It has furnished a statement showing performance of container vessels handled after 10 January 2007 and has stated there have been improvements in terms of reduction in pre-berthing delays and sailing time of container vessels.
 - (ii). It has opined that levy of priority movement charge is only an interim solution. Permanent solution lies in upgrading the port infrastructure in terms of recruitment of additional pilots, increasing the force level of powerful tugs, provision of additional mooring gangs, acquisition of one more pilot launch, etc. This is particularly relevant because the port is now gearing up towards expansion of outer harbour under NMDP.
 - (iii). As a part of representation from Visakhapatnam Container Lines Association, it has requested to promulgate the list of categories that would get priority before container vessels to the trade to avoid confusion.
 - (iv). The proposal of VPT to levy 10% additional fee of applicable pilotage charges for according priority to all container vessels at the time of berthing/sailing, is laudable and needs to be continued. However, plans must be afoot for up-gradation of port infrastructure to get a lasting solution and eventual removal of this additional charge.
2. A joint hearing, in this case was held on 12 June 2007 at the Visakhapatnam Port Trust premises. At the joint hearing, following submissions were made:

Visakhapatnam Port Trust

- (i). If we provide priority to container vessels, VPT will incur loss. The loss is 20%. We would like to levy a charge to the extent of 10%.

Visakha Containers Lines Association

- (ii). We agree with the proposal.
- (iii). We request port should not levy this charge if delay in providing pilot service is for more than 3 hours.