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TARIFF AUTHORITY FOR MAJOR PORTS

G. No. : 165

New Delhi, 7 October 2004

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963) and in compliance of the reference No.PR-14019/20/2004-PG dated 23 August 2004 made by the Ministry of Shipping, the Tariff Authority for Major Ports hereby decides the case relating to fixation of handling charge for Manganese Ore at the Visakhapatnam Port Trust for the period from 13 February 1992 to 31 August 2003 as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/41/2004-VPT

Visakhapatnam Port Trust

- - - -

Applicant

ORDER

(Passed on this 1st day of October 2004)

This case is initiated based on the reference No.PR-14019/20/2004-PG dated 23 August 2004 received from the Ministry of Shipping (MOS) relating to fixation of handling charges for manganese ore at the Visakhapatnam Port Trust (VPT) for the period from February 1992 to August 2003.

2. The MOS in its order has stated that the Hon'ble High Court of Andhra Pradesh in their Judgement dated 18 March 2004 in Writ Petition Nos. 17423 and 17424 of 1992 has directed the Central Government to consider and decide the appropriate Scale of Rates of handling charges of manganese ore in VPT for the post-1992 after giving an opportunity to the petitioner i.e. M/s. Sarawagi Co. (P) Ltd., as well as VPT.

3.1. It may be relevant to mention that the Central Government under similar circumstances had passed an Order on 2 August 1998 transferring the case relating to fixation of handling charge for manganese ore at VPT for the period 1986-1992 to the TAMP.

3.2. In compliance of the Government Order, this Authority had taken up the case following the usual consultation process and passed an Order on 8 December 1999 disposing of this case. Some of the main principles set by this Authority in the said Order are summarised below:

- (i). The cost of surplus Ore Handling Labour (OHL) is to be reckoned with commonly for all ores including iron ore handled mechanically.
- (ii). The most equitable formula prescribed for determining the respective shares of labour costs is as follows:
 - (a). Total number of Labour (-) Shore Handling Labour = Ore Handling Labour (Gross).
 - (b). Ore Handling Labour (Gross) (-) Interchangeable Labour = Ore Handling Labour (Net).
 - (c). Ore Handling Labour (Net) (-) Labour deployed for any particular Ore = Surplus Labour.
 - (d). The cost of the labour deployed for the particular ore will have to be a charge fully on the Ore concerned for the period of deployment and the cost thereof for the remaining period of the year added to the cost of surplus labour as at (c) above.
 - (e). The cost of the 'Surplus' Labour will have to be spread over the entire ore traffic for the whole year.
- (iii). Since this Authority was dealing with past periods, the benefit of hindsight was available while applying this model and hence the computation was done on the basis of 'mandays' and not on 'number of labour'.

4.1. Based on the precedence available in a similar circumstance relating to handling charge for manganese ore, the Ministry of Shipping has transferred the case about deciding the appropriate Scale of Rates of handling charges of manganese ore at the VPT for the post-1992 period to this Authority and has directed to dispose of the case within a period of 4 months from the date of receipt of the Order of Hon'ble High Court of Andhra Pradesh by the MOS (i.e. 17 May 2004).

4.2. Since the Order of the MOS was not clear about the legal provision under which the case was referred to the TAMP, this Authority has highlighted the issues emerging from the said Order to the MOS and also about the presumption that the TAMP can legally modify the rates in the case in reference retrospectively in exercise of its powers available under Section 48, 49 and 50 of the Major Port Trusts Act, 1963.

4.3. The MOS has confirmed that its order is in pursuance of the Order of the Hon'ble High Court of Andhra Pradesh and has advised this Authority to proceed with deciding the matter. Further, with reference to the earlier representation made by the VPT to modify the TAMP Order of December 1999, the MOS had taken a decision not to interfere.

4.4. The position emerging from the Order of the MOS was also pointed out to the VPT for their comments if any. We have not received any specific response from the VPT in this regard.

5.1. In this backdrop, a tariff proceeding relating to fixation of handling charge for manganese ore for the post-1992 period was initiated on 24 August 2004.

5.2. The earlier Order of this Authority specifically stated that the model prescribed therein could be applied for the post-1992 period also. In view of this position, the VPT was advised to file a proposal for fixation of handling charge for the post-1992 following the same model. The VPT was also requested to simultaneously forward its proposal to M/s. Sarawagi Co. (P) Ltd., for their comments, if any, thereon.

6.1. Accordingly, the VPT has filed its proposal on 1 September 2004. Some of the main points made by the VPT are summarised below:

- (i). The Government's directive does not state that the model prescribed by the TAMP in its earlier order is to be followed for fixation of handling charge for manganese ore for the period 1992-2003.
- (ii). The model prescribed by TAMP is, however, acceptable to it except the point of spreading the cost of surplus labour to the total ore traffic including iron ore handled mechanically at the outer harbour.
- (iii). It has reiterated its earlier argument that the work force of Ore Handling labour (OHL) has been created exclusively for handling mineral ores through conventional (manual) system. Iron ore is handled through exclusive Ore Handling Complex facilities and, therefore, it may not be appropriate to spread the cost of surplus labour to the Iron ore traffic being handled mechanically.
- (iv). There is no scope to include the element of surplus labour cost to iron ore rate since it had incurred huge losses in this activity till 1988-89 and even the legitimate conveyor handling cost could not be recovered.
- (v). Spreading of surplus labour cost over the total ore traffic will only remain as a notional phenomenon and surplus labour cost element would be left un-recovered.

6.2. The VPT has furnished detailed cost sheet computing handling charges of manganese ore for the post-1992 period in the model prescribed by the TAMP with the exception of spreading the surplus labour cost only to ore traffic handled manually. Accordingly, the rates proposed by the VPT are as follows:

| Years | Proposed rate per tonne (in Rs.) |
|--------------|---|
| 1992-93 | 33.34 |
| 1993-94 | 26.10 |
| 1994-95 | 20.44 |
| 1995-96 | 19.06 |
| 1996-97 | 10.42 |
| 1997-98 | 10.93 |
| 1998-99 | 10.03 |
| 1999-00 | 7.74 |

| Years | Proposed rate per tonne (in Rs.) |
|---------|-------------------------------------|
| 2000-01 | 5.75 |
| 2001-02 | 5.21 |
| 2002-03 | 3.36 |
| 2003-04 | 4.74 |

6.3. The VPT has confirmed that as advised by us, a copy of its proposal has also been forwarded to M/s. Sarawagi Co. (P) Ltd., for their comments.

7.1. A joint hearing in this case was held on 6 September 2004 at the office of this Authority. At the joint hearing, the VPT and M/s. Sarawagi & Co. (P) Limited have made the following submissions:

M/s. S.K. Sarawagi & Co. (P) Limited

- (i). Even after decasualisation of labour in 1958, the labours used to handle all ores at eastern dump including manganese ore and iron ore. This continued till 1986 when NG loco system was withdrawn. We were asked to deploy our own pay loaders and slings. Our cost was around Rs.37/- PMT.
- (ii). Explained the background of earlier case in which Hon'ble Supreme Court passed the Order in 1997 relating to the period 1986-92.
- (iii). The Supreme Court and TAMP in its earlier order emphasized the concept of 'quid pro quo' in tariff setting.
- (iv). In the earlier proceeding before TAMP, we had pointed out double or triple charge for hooking. Please take note of our arguments and prayers made then about rates applied by VPT for Thermal Coal.
- (v). TAMP has already prescribed a model. VPT has challenged the Order and the High Court initially stayed the Order but subsequently the Court Order to effect refund of the money after obtaining bank guarantee from us.
- (vi). Post – 1992, we are paying @ Rs.20/- PMT based on earlier Order of High Court.
- (vii). TAMP has earlier held that post-1992, cost of surplus labour should be spread over the entire traffic.
- (viii). The principles already set up by TAMP in pre-1992 case should apply now also. We have no objection.

Visakhapatnam Port Trust

- (i). Iron Ore was handled separately since 1965. The OHL labour had nothing to do with iron ore.
- (ii). We don't have a chance to apportion the labour cost to Iron Ore retrospectively.
- (iii). We have to pay the labour. Therefore, the cost has to be recovered.
- (iv). We accept the TAMP model prescribed earlier except spreading over labour cost to Iron ore.

7.2. M/s. Sarawagi & Co. (P) Ltd., have furnished written comments on the VPT proposal at the joint hearing held on 6 September 2003. The main points made by M/s. Sarawagi Co. (P) Ltd., with reference to this proposal are summarised below:

- (i). In the earlier judgement of the Supreme Court, the principle of 'quid pro quo' has been emphasized.

- (ii). The request of the VPT for not spreading the cost of surplus labour over the total ore traffic including iron ore handled mechanically is illogical.
- (iii). Prior to the commissioning of mechanised ore handling plant, iron ore was handled manually which required large number of labour. In fact mechanization of iron ore handling had resulted in more surplus labour than that caused by dismantling of narrow guage Railway line for transporting manganese ore (and even iron ore also earlier).
- (iv). Logically the cost of surplus labour should not be taken into account for fixing the tariff as it is not part of the cost of service rendered by the port. If, however, as previously opined by this Authority, the cost of surplus is to be reckoned with, it may be logical to distribute this burden on all cargo traffic irrespective of nature of cargo imported or exported.
- (v). The submissions made by the VPT that spreading surplus labour cost over total ore traffic will remain a notional phenomenon and that this cost element will remain unrecovered is illogical and unethical. A non service element is actually an extraneous factor for determining charges for service rendered. Secondly, there can be no distinction between iron ore handled mechanically or manually as regards recovery of cost of surplus labour.
- (vi). The argument of the VPT that it cannot recover the cost of surplus labour as per the TAMP guidelines since it is sustaining loss is not the correct position. The port is in fact consistently showing huge revenue surplus year after year.
- (vii). Without prejudice, it has, however, agreed that formula prescribed by the Authority for fixation of handling charge for the period 1986 to 1992 can reasonably be adopted for determining tariff for post-1992 period also.
- (viii). It has also requested that opportunity may be given to them to furnish comments on the cost statement of the VPT as they could not verify the calculations for want of sufficient time.

7.3. At the joint hearing, the VPT agreed to furnish a detailed note by 10 September 2004 explaining the origin of labour force in reference and history of mechanization of iron ore handling in support of its claim for a review of the TAMP Order of 1999 in so far as spreading of cost of surplus labour over iron ore traffic also. The VPT has also agreed to examine whether the rate fixed by TAMP for manganese ore is applicable on common basis or only to the litigant users.

8. As decided at the joint hearing, the VPT vide its letter dated 7 September 2004 and 10 September 2004 has furnished copy each of the Writ Petition filed by the VPT challenging the TAMP Order of December 1999, orders of the High Court Of Andhra Pradesh granting interim stay and a subsequent Order vacating this stay granted earlier. It has informed that the Writ petition is still pending before the High Court for disposal. It has also made the following main submission on the proposal along with revised computation.

- (i). It has reiterated its earlier point about not spreading cost of surplus labour on iron ore handled mechanically and has made following points in support of its argument:
 - (a). The Ore handling plant was commissioned in 1965 in the inner harbour and not in 1976 as mentioned in the TAMP Order.
 - (b). The Ore Handling Labour (OHL) was departmentalised in October 1964.
 - (c). Mechanical Ore Handling Plant (MOHP) was never envisaged for handling iron ore handled manually and hence the observation of the TAMP that OHL are meant for iron ore is not correct. Conventional handling of iron ore though meager at around 10.66% was completely stopped during 1970.

- (d). The surplus labour arises not simply due to fall in ore traffic but due to various other factors like introduction of incentive schemes, change in method of operation, etc.
 - (e). It is bound by various statutory obligations toward its man power and it is not practically and legally possible to reduce or increase the manpower depending on fluctuation in traffic.
- (ii). It has suggested two methods for sharing surplus labour cost to minimize the burden on manganese/ ore traffic. The first method is to spread it over the actual traffic handled and second is based on time rate wages paid for the workers deployed as per datum. The VPT has suggested that the lower of the two methods may be considered.
 - (ii). In the revised computation it has modified the figures relating to wages of hook men, piece rate, number of labour interchangeable to DLB, etc. In the revised computation also the VPT has spread cost of surplus labour over the ore traffic other than iron ore handled mechanically as was computed by it earlier.

9.1. The written submissions made by the VPT along with the revised computation was forwarded to M/s. Sarawagi & Co. (P) Ltd., requesting to offer their comments by 23 September 2004. M/s. Sarawagi & Co. (P) Ltd., have been specifically advised to verify the calculations of VPT and, if necessary, to obtain necessary clarification on data from VPT. The VPT was also advised to be co-operative with M/s. Sarawagi & Co (P) Ltd., in this regard.

9.2. M/s. Sarawagi & Co (P) Ltd., have responded to the revised proposal of the VPT. It has pointed out in a general manner that the figures furnished by the VPT in the revised proposal vary from its original computation. It has illustrated that the wages of hook-men has been increased in comparison to its initial computation. M/s. Sarawagi & Co (P) Ltd., have, however, not made any other comments on verification of the data furnished by the VPT. They have reiterated that they have no objection to follow the model prescribed by the TAMP for fixation of handling charge for manganese ore.

10. As per the direction of the MOS, this case is to be finalised by 16 September 2004. This Authority is well aware of the limited time available in disposing of this case and accordingly has taken all efforts to expedite final disposal. In view of procedural issues and requirement of giving adequate opportunity to parties to represent their case, it was not possible to meet the prescribed deadline. The MOS was, therefore, requested to extend the time limit prescribed for disposal of this case by one more month i.e. up to 16 October 2004. The Order is passed well within the extended time limit.

11.1. This Authority vide its earlier Order of December 1999 had already prescribed a model for calculation of handling charges for manganese ore. It was also indicated that this model could be applied for post-1992 period also.

11.2. M/s. S.K. Sarawagi & Co. (P) Limited have no objection to applying the model prescribed earlier for determining the handling charges for manganese ore for the post -1992 period.

11.3. The VPT has also agreed to the model prescribed earlier but with an exception of not including the iron ore traffic handled mechanically in the computation of total ore traffic.

11.4. The request of VPT in this regard is not new. As a matter of fact, it had approached the Government on the very same point to modify the Order of December 1999 passed by this Authority. The Government had refused to interfere.

The VPT had also challenged the earlier Order in the Hon'ble High court of Andhra Pradesh. From the documents produced in this proceedings, it is clear that the operation of the Order of December 1999 has not been stayed or set aside by the Hon'ble High Court, even though the writ petition filed by the VPT is still pending for final disposal. In effect, the earlier Order of December 1999 still survives and the model prescribed therein cannot be totally ignored now to adopt a new approach. In fact, no new developments have been brought to our notice warranting a totally new

approach to be adopted. That being so, this Authority finds it appropriate to settle the issue in reference by applying the model prescribed in December 1999 Order. It is noteworthy that in this case also, the benefit of hindsight is available and, therefore, the model can reckon with 'man days' and not 'number of labour'.

12.1. The relevant data for calculation of handling charges for the period from April 1993 to August 2003 are furnished by VPT. M/s. S.K. Sarawagi & Co. (P) Limited have been given an opportunity to verify the figures from the records of VPT. In fact, the VPT has also written separately to M/s. S.K. Sarawagi & Co. (P) Limited about their willingness to cooperate with them in this regard. We have not, however, received any specific response from M/s. S.K. Sarawagi & Co. (P) Limited within the stipulated time limit. Since the data pertaining to the past period are based on the actual records maintained VPT, we accept the figures furnished by the VPT which are relied upon in this analysis.

12.2. The cost statement furnished by the VPT includes a new entry for pool workers deployed from the year 1998-99 onwards. The wage cost of this labour who are on contract is less than the wage cost of regular OHL. The VPT has included cost of this category of workers only to the extent the pool workers were deployed for handling this cargo. Since there has been no objection from M/s. S.K. Sarawagi & Co. (P) Limited, inclusion of the cost of pool labour in the model prescribed earlier is accepted.

12.3. The VPT has reported that handling of manganese ore has been shifted to Visakhapatnam Dock Labour Board from 1 September 2003 and hence handling charges for manganese ore is required to be fixed for the period after 12 February 1992 upto 31 August 2003. The Order of the MOS also requires this Authority to fix handling charges for manganese ore for this period. The cost details furnished by the VPT are, however, from the financial year 1992-93 till August 2003. The handling charges for manganese ore for the year 1991-92 had already been fixed vide this Authority's Order of December 1999. This rate will, therefore, continue to apply for the period from 13 February 1992 to March 1992. The handling charges for manganese ore are, therefore, to be prescribed for the period from 1992-93 till August 2003.

13. The issue about fixing reasonable handling charges for manganese ore at VPT has been agitated by M/s. S.K. Sarawagi & Co. (P) Limited, who are one of the port users in this segment. The reference made by the MOS to this Authority is for deciding appropriate Scale of Rates of handling charges of manganese ore at VPT for the post - February 1992 period. This means, the rates approved now will have common application. The matter is decided accordingly.

14. It appears that the existing rate of Rs.30/- PMT for handling manganese ore was approved and notified by the Central Government in 1992. In the earlier proceedings before this Authority, the question was fixing the rates for the period 1986-92. The issue involved now is modifying retrospectively the Scale of Rates approved earlier by the Central Government. When consulted in this regard, the MOS has advised us to go ahead with prescription of rates for the post-1992 in pursuance of the order of the Hon'ble High Court of Andhra Pradesh. That being so, the rates prescribed now for the post-1992 period will come into effect retrospectively in suppression of the rate earlier approved by the Central Government.

15. In the result, and for the reasons given above, this Authority fixes handling charge for manganese ore for the period 1992-93 to 31 August 2003 as set out in the statement attached as **Annex- I**. As mentioned earlier, the handling charge for manganese ore for the period from 13 February 1992 to 31 March 2003 will be Rs. 5.16 per tonne in terms of the earlier Order of December 1999. The VPT is directed to amend its Scale of Rates accordingly with retrospective effect.

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

**FIXATION OF
RATE FOR
HANDLING
MANGANESE ORE
FOR THE PERIOD
1992-93 TO 2003-
04 (UPTO 31
AUGUST 2003).**

| Sl.No | Description | Unit | 1992-93 | 1993-94 | 1994-95 | 1995-96 | 1996-97 | 1997-98 | 1998-99 | 1999-2000 | 2000-2001 | 2001-02 | 2002-03 | 2003-04 upto August 2003 |
|-------|-----------------------------------|-----------|---------|---------|---------|---------|---------|---------|---------|-----------|-----------|---------|----------|--------------------------|
| 1 | Manganese Ore handled | in tonnes | 79497 | 56534 | 83331 | 81737 | 74085 | 61309 | 60341 | 164351 | 227281 | 172554 | 172250 | 6949 |
| 2 | Total quantity of Ores handled | in tonnes | 5586930 | 5870876 | 6160813 | 6355327 | 6633613 | 7923981 | 7465253 | 7984115 | 9860160 | 9497160 | 11090154 | 382690 |
| 3 | Total Number of labour | mandays | 171915 | 114610 | 95630 | 85045 | 51830 | 37960 | 26280 | 18615 | 9855 | 3650 | 1460 | 45 |
| 4 | Less: Shore Handling Labour (SHL) | mandays | 33215 | 25915 | 16425 | 13870 | 9490 | 4015 | 2190 | 1095 | 730 | 730 | 0 | |
| 5 | Ore Handling Labour (OHL) (3-4) | mandays | 138700 | 88695 | 79205 | 71175 | 42340 | 33945 | 24090 | 17520 | 9125 | 2920 | 1460 | 45 |
| 6 | Less: Inter changeable to DLB | mandays | 33271 | 21276 | 24646 | 24448 | 16576 | 0 | 0 | 0 | 188 | 0 | 0 | |
| 7 | Balance OHL (5-6) | mandays | 105429 | 67419 | 54559 | 46727 | 25764 | 33945 | 24090 | 17520 | 8937 | 2920 | 1460 | 45 |

| | | | | | | | | | | | | | | |
|----|---|---------|---------|---------|---------|---------|---------|--------|--------|---------|-------------------------|--------|--------------------------|-------|
| 8 | OHL deployed for Manganese ore | mandays | 1575 | 896 | 1915 | 1921 | 1678 | 1986 | 924 | 1728 | 1150 | 264 | 80 | 3 |
| 9 | Pool Workers deployed for manganese ore | mandays | 0 | 0 | 0 | 0 | 0 | 0 | 636 | 2286 | 4009 | 3420 | 2156 | 110 |
| 10 | OHL deployed for other ores | mandays | 14067 | 11073 | 9890 | 14741 | 15171 | 26985 | 19272 | 15792 | 7787 | 2048 | 1380 | 32 |
| 11 | Surplus OHL (7-8-10) | mandays | 89787 | 55450 | 42754 | 30065 | 8915 | 4974 | 3894 | 0 | 0 | 608 | 0 | 10 |
| 12 | Daily Wage Rate of OHL | in Rs. | 102.81 | 111.17 | 117.85 | 128.72 | 140.00 | 150.87 | 226.97 | 251.57 | 258.56 | 266.48 | 276.25 | 290.2 |
| 13 | Daily Wage Rate of Pool workers | in Rs. | - | - | - | - | - | - | 75 | 75 | 82 (w.e.f. 1.1.2001) | 100 | 130 (w.e.f. 1.9.2002) | 15 |
| 14 | Wages of OHL deployed for manganese ore (12 x 8) | in Rs. | 161926 | 99608 | 225683 | 247271 | 234920 | 299628 | 209720 | 434713 | 297344 | 70351 | 22100 | 870 |
| 15 | Wages for 12 Hook men | in Rs. | 33294 | 22192 | 52245 | 45468 | 39780 | 43424 | 56663 | 176547 | 279023 | 185445 | 132780 | 6359 |
| 16 | Piece Rate for OHL | in Rs. | 152402 | 115039 | 212868 | 184675 | 148400 | 78222 | 77462 | 234776 | 197508 | 48893 | 21991 | 752 |
| 17 | Wages for Pool workers | in Rs. | 0 | 0 | 0 | 0 | 0 | 0 | 47700 | 171450 | 328738 | 342000 | 280280 | 16620 |
| 18 | Cost of manganese ore labour (14+15+16+17) | in Rs. | 347622 | 236839 | 490796 | 477414 | 423100 | 421274 | 391545 | 1017486 | 1102613 | 646689 | 457151 | 24601 |
| 19 | Cost of surplus OHL (11 x 12) | in Rs. | 9231001 | 6164377 | 5038559 | 3869967 | 1248100 | 750427 | 883821 | 0 | 0 | 162020 | 0 | 3134 |

| | | | | | | | | | | | | | | |
|----|--|--------|-------------|-------------|--------------|-------------|-------------|--------------|-------------|-------------|-------------|-------------|-------------|------------|
| 20 | Cost per tonne of manganese ore labour (18 /1) | in Rs. | 4.37 | 4.19 | 5.89 | 5.84 | 5.71 | 6.87 | 6.49 | 6.19 | 4.85 | 3.75 | 2.65 | 3.5 |
| 21 | Cost per tonne of surplus OHL (19/2) | in Rs. | 1.65 | 1.05 | 0.82 | 0.61 | 0.19 | 0.09 | 0.12 | 0.00 | 0.00 | 0.02 | 0.00 | 0.0 |
| 22 | Total cost per tonne for manganese ore (20+21) | in Rs. | 6.03 | 5.24 | 6.71 | 6.45 | 5.90 | 6.97 | 6.61 | 6.19 | 4.85 | 3.76 | 2.65 | 3.5 |
| 23 | Leave, pension & other benefits @ 20% (22 x 20%) | in Rs. | 1.21 | 1.05 | 1.34 | 1.29 | 1.18 | 1.39 | 1.32 | 1.24 | 0.97 | 0.75 | 0.53 | 0.7 |
| 24 | Overheads @ 30% (22 x 30%) | in Rs. | 1.81 | 1.57 | 2.01 | 1.93 | 1.77 | 2.09 | 1.98 | 1.86 | 1.46 | 1.13 | 0.80 | 1.0 |
| 25 | Total Cost per tonne i.e. handling charges for manganese ore per tonne (22+23+24) | in Rs. | 9.04 | 7.86 | 10.06 | 9.67 | 8.85 | 10.45 | 9.91 | 9.29 | 7.28 | 5.65 | 3.98 | 5.3 |