

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

TARIFF AUTHORITY FOR MAJOR PORTS

G.No. : 123

New Delhi, 16 July 2004

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 approves interim tariff arrangement for operations of Vizag Seaport Limited in the Visakhapatnam Port as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/33/2004-VSL

Vizag Seaport Limited

Applicant

ORDER

(Passed on this 8th day of July 2004)

The Vizag Seaport Limited (VSL) is reported to have entered into a License Agreement (LA) on 28 November 2001 for construction, operation, management and maintenance of two multipurpose berth EQ-8 and EQ-9 in the northern arm of Inner harbour at the VPT for handling coal, limestone, rock phosphate, sulphur and other bulk cargo or general cargo on Built, Operate and Transfer (BOT) basis. It proposes to commence the operation from 5 July 2004. The VSL has requested this Authority to permit to recover tariff as prescribed in the existing Scale of Rates of the Visakhapatnam Port Trust (VPT) for an interim period of three months for handling a few vessels and assured that it would submit a detailed proposal within 20 days.

2. The VSL has stated that it had not submitted the proposal earlier for fixation of rates at its multipurpose berth since the LA stipulates that the Licensee is entitled to recover the tariff as per the Scale of Rates of the Visakhapatnam Port Trust approved by the TAMP. We do not have a copy of the LA to verify this claim.

3. In the mean while, the VPT has sent a communication confirming that the LA entered with the consortium led by M/s Gammon India Limited has been approved by the Ministry of Shipping u/s 42(3) of the Major Port Trust Act, 1963 and endorsed the proposal of VSL for adoption of the Scale of Rates of VPT pending disposal of the tariff proposal (to be) filed by VSL.

4. It is relevant to mention that Section 42 (4) of the MPT Act read with section 48 *ibid* requires the rates to be notified by the TAMP in respect of identified services performed by the persons authorized u/s 42 (3) by a port trust. Even if rates from the existing Scale of Rates of the port are intended to be adopted by the private operator a specific authorization of the TAMP is essential. This is the legal position. While VSL refers to the ambiguity in the Licence Agreement, the VPT has pointed out that it had 'since been informed' of the requirements of the Major Port Trust Act, 1963. It is not possible from the records made available to us to find out where the fault lies. Be that as it may, both VPT and the VSL are governed by MPT Act and are expected to be aware of the tariff setting arrangement envisaged in the Act. Ignorance of the law cannot be an excuse. In fact the VPT should have guided VSL well in time to seek approval of this Authority for levy of tariff at its new multipurpose berths to be operated under the License Agreement.

5. Notwithstanding the shifting of responsibilities by VSL and VPT, the fact remains that this Authority is presented with a *fait accompli* situation due to the casual attention to the legal provisions paid by the concerned parties. Strictly speaking, such a lapse should be viewed seriously and the appropriate action would be to take up the case for fixation of rates for VSL only after processing its proposal, when submitted. This course of action, though the parties concerned remain fully responsible for that, would have made the port facility created at a considerable investment to idle for want of tariff. In the larger public interest, this Authority is willing to take a lenient view and consider the request for interim tariff pending submission of a tariff proposal by VSL.

6. It is relevant to mention that this Authority while fixing the tariff takes into consideration the surplus/ deficit position reflected by the cost/ financial statement of the major port/ terminal. No such details are available in the instant case. The VSL has proposed to levy the rates prescribed in the Scale of Rates of the VPT. It may be relevant to mention that the Scale of Rates of the VPT was fixed taking into consideration the cost position reflected by the port which also involved cross-subsidisation between various services/ activities and cost of social obligations of the Port Trusts which may not be relevant to the VSL. In view of this

position and also in the absence of any relevant cost details of the VSL available for scrutiny, this Authority decides to allow levy of interim tariff at 75% of the rates prescribed in the VPT Scale of Rates by VSL for the relevant services provided by it as per the License Agreement. The relevant conditionalities prescribed in the Scale of Rates of VPT will apply in the case of VSL also. The interim arrangement will be valid for a period of three months subject to the VSL filing its comprehensive tariff proposal in the prescribed proforma latest by 26 July 2004. The interim tariff arrangement shall automatically lapse on 26 July 2004 if a comprehensive proposal supported by all relevant details is not filed by the VSL within the stipulated date.

7. Ordinarily, the rates approved by this Authority are implemented after allowing a lead time. In the instant case, no approved tariff is available for the VSL and already some vessels are reportedly waiting to commence the operation. Further, the rates allowed for VSL are lower than the existing rates at VPT. It is, therefore, found appropriate to waive the lead time for implementation of the approved rates in this case. The interim tariff arrangement approved for VSL shall come into effect immediately.

8. The VSL is directed to submit its proposal for fixation of final rates by 26 July 2004 latest.

(A.L. Bongirwar)
Chairman