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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 195

New Delhi, 28 November, 2003

NOTIFICATION

In compliance with the policy direction issued by the Government of India, Ministry of Shipping under Section 111 of the MPT Act, 1963 to treat maximum of 27% of revenue share payable by the Chennai Container Terminal Limited (CCTL) as cost and in exercise of the powers conferred under Section 48 of the Major Port Trust Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves an interim revised Scale of Rates of CCTL as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

TARIFF AUTHORITY FOR MAJOR PORTS
No. TAMP/73/2003-CHPT

ORDER

(Passed on this 27th day of November 2003)

The existing Scale of Rates of the Chennai Container Terminal Limited (CCTL) was approved by this Authority vide its Order dated 6 March 2002 which was notified in the Gazette of India on 15 March 2002. The validity of this Scale of Rates was till 14 September 2003. While fixing the tariff, 37.128% of revenue share payable by CCTL to the Chennai Port Trust was not allowed by this Authority as a cost element for stated reasons. However, the approach adopted to fix the tariff at that time has allowed CCTL to have a revenue surplus of 24.9% for the year 2002 and 14.1% for the year 2003 after meeting admissible cost and permissible return.

2. The CCTL filed a writ petition against this Order before the Hon'ble High Court of Delhi. In the meanwhile, the issue relating to tariff fixation for the private terminals of PSA SICAL and CCTL was taken up by the Government of India in the Ministry of Shipping. It was decided by the Ministry of Shipping to permit revision of tariff in the case of CCTL and accordingly as required under section 111 of the MPT Act, the Ministry of Shipping, after seeking the views of this Authority, has issued a direction under section 111 of the Act directing revision of tariff in the case of CCTL. This Authority had taken a stand in the matter vide its Order dated 6 March 2002 and a review petition filed by the CCTL against this Order was also rejected by this Authority on 12 August 2002. Thus, the views of the TAMP about not admitting revenue share as cost for computation of tariff are known through these orders. This Authority, as required, had given an elaborate response to the proposed policy direction.

3. The Government of India in the Ministry of Shipping vide its letter No. PR-14019/6/2002-PG(1) dated 7 November 2003 issued a policy direction to this Authority under section 111 of the MPT Act for reviewing and revising tariff in the case of CCTL. The salient points contained in this policy direction of the Government are given below:

- (i). The views of TAMP have been duly considered.
- (ii). It has been considered that the policy about royalty payment being not taken as cost of CCTL for tariff fixation was not cleared till 29 July 2003, operators taking a stand that royalty payment was to be allowed a pass through and the fact that not permitting royalty payment as an element of cost has resulted in losses to CCTL which situation is likely to have adverse impact on policy of Government for private participation at ports.
- (iii). It has, therefore, been decided as a question of policy to direct TAMP.
- (iv). TAMP may review and revise tariff in the case of CCTL so as to take into account royalty/revenue share as cost for tariff fixation in such a manner as to avoid likely loss to CCTL on account of the royalty/revenue share not being taken into account for tariff fixation, subject to a maximum of 27% (out of total 37.138%) royalty/revenue sharing being paid by them to the Port.
- (v). This treatment may continue to be allowed for such remaining period of agreement with CCTL as may be necessary for the above purpose only.
- (vi). The final orders of TAMP in this regard, however, may be issued after the case filed by CCTL is withdrawn by them.

4. In terms of Section 111 of the MPT Act, this Authority in discharge of its functions is bound by the directives on question of policy as the Central Government may give in writing from time to time.

5. In order to comply with the policy direction of the Government, the CCTL was advised by us on 11 November 2003 to submit its tariff proposal in the proforma prescribed by this Authority for submission of tariff proposals. It was brought to their notice that the present tariff structure notified by this Authority on 15 March 2002 was valid only till 14 September 2003. The CCTL was also requested to inform about the status of withdrawing the case filed by it before the Hon'ble High Court of Delhi.

6. In response, the CCTL vide their letter dated 11 November 2003 has assured to submit its tariff application within 15 days of the new tariff notified by TAMP. It has requested this Authority to pass only an interim order which will be valid for 90 days. Subsequently on 27 November 2003 the CCTL informed us that they had withdrawn the case filed by them in the High Court of Delhi.

7. It is necessary for this Authority to expeditiously implement the policy direction given by the Government in the CCTL case. Since the CCTL wants time to frame its fresh proposal and hence prayed for interim tariff, this Authority is left with no other alternative but to rely on the financial position for the years 2002 and 2003 analysed and accepted in our earlier Order dated 6 March 2003. Without altering any other parameters admitted and allowed earlier for the year 2003 and by including 27% of the gross revenue as cost, the earlier calculation for the year 2003 has been re-worked. The revised calculation (**Annex-I**) discloses a deficit of 17.73% of revenue after accounting for all admissible cost, including the revenue share prescribed in the policy direction of the Government and permissible return on equity.

8. It would have been more appropriate if the traffic and cost projections are updated with reference to the actual performance and anticipated development in near future. Since such analysis is not received from the CCTL, as mentioned earlier, we relied on the position considered in our earlier order as an interim approach. Since this is a case of fixation of interim tariff for immediate implementation of the policy direction of the Government, this Authority finds it reasonable to increase the existing tariff by 17% which will give CCTL the benefit of recovering 27% of revenue share as cost through tariff. This interim relief will be valid for a limited period.

9. As has already been mentioned, the tariff fixed by this Authority vide its order dated 6 March 2002 was valid till 14 September 2003. Since the continued levy of the existing rates made by CCTL after 14 September 2003 is a fait-accompli, this Authority is now willing to extend the validity beyond the earlier stipulated date. The existing rates will, therefore, continue to be levied till the revised interim rates come into effect.

10. The CCTL has already been advised by us to file its proposal for review of tariff. This is necessary for us to fix tariff based on realistic facts and figures. The CCTL is once again advised to submit its proposal on or before 15 December 2003. Since submission of such proposal and its processing in this Authority will take some time, the interim rates fixed now will remain valid till 31 January 2004 or till final Order is passed by this Authority in response to proposal to be received from CCTL whichever is earlier. The interim rates will automatically cease to be in operation unless an explicit extension is given by this Authority beyond the period as authorised above. While fixing final rates, the interim rates fixed now will be reviewed and if necessary tariff adjustment with retrospective effect will have to be made. In the event, the CCTL will adjust its billings suitably.

11. In the result, and subject to the observations made above, this Authority approves on an interim basis an across-the-board increase of 17% over the existing Scale of Rates of the CCTL so as to implement the directive of the Government to allow CCTL through tariff 27% revenue share as cost, till 31 January 2004 or till final order is passed, whichever is earlier, subject to review while passing final order in this case.

12. The interim revised Scale of Rates of CCTL will come into effect immediately on notification of this Order in the Gazette of India.

(A.L. Bongirwar)
Chairman

**COST STATEMENT OF THE CHENNAI CONTAINER TERMINAL LIMITED
INTERIM ORDER FOR THE YEAR 2003**

| (Amount in Rs. 000) | | |
|---------------------|---|------------------|
| Sr. No. | Particulars | <u>2003</u> |
| | Throughput in TEUs | 484,395 |
| I | REVENUE | |
| | Gross Revenue | 1,295,639 |
| | Less: Revenue share of 27% of the gross revenue treated as cost in compliance with the direction issued by the Government under Section 111 of the MPT Act. | 349,823 |
| | TOTAL (I) | 945,816 |
| II | OPERATING EXPENSES | |
| | Operating & Direct Labour | 104,599 |
| | Maintenance Labour | 17,213 |
| | Equipment Running Costs | 138,353 |
| | Operations Equipment Depreciation | 153,353 |
| | Other Expenses | 165,225 |
| | TSA Fees - P&O Ports | 0 |
| | Sub Total | 578,744 |
| | OVERHEADS | |
| | Management and Administration Labour | 18,785 |
| | Non-operating Depreciation | 40,054 |
| | General Overheads | 42,696 |
| | Preliminary Upfront Payment write off | 3,525 |
| | Equipment written off during the year | 82 |
| | Sub Total | 105,142 |
| | TOTAL (II) | 683,885 |
| III | SURPLUS (I-II) | 261,931 |
| IV | FINANCING CHARGES | |
| | Interest on Loans/ Financing Costs | 191,707 |
| | Forex Losses on repayment | 0 |
| | TOTAL (IV) | 191,707 |
| V | SURPLUS AFTER FINANCING CHARGES (III-IV) | 70,224 |
| VI | Credit back of the amount receivable at the end of the 30th year (Discounted @ 12%) | 7,496 |
| VII | NET SURPLUS/(DEFICIT) AFTER THE CREDIT BACK (V+VI) | 77,720 |
| VIII | Equity Share | 1,533,793 |
| | Borrowed Funds | 1,595,475 |
| IX | Return on Equity Share @ 20% linked to capacity utilisation of around 80% | 245,407 |
| X | NET SURPLUS/DEFICIT AFTER INTEREST, CREDIT BACK AMOUNT AND RETURN | (167,687) |
| XI | NET SURPLUS/DEFICIT AS A PERCENTAGE OF NET REVENUE AFTER ALLOWING RETURN ON EQUITY AND ACTUAL INTEREST | -17.73% |

| Note: | |
|--------------|--|
| (1). | Throughput, gross revenue estimates and all the cost figures are retained as per our Order number TAMP/73/2001 dated 6 March 2002. |
| (2). | Revenue share of 27% of the gross revenue has been treated as cost in compliance with the direction issued by the Gouvernement under Section 111 of the MPT Act. |