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TARIFF AUTHORITY FOR MAJOR PORTS

G. No. 160

New Delhi, 9 October, 2003

NOTIFICATION

In exercise of the powers conferred under Section 49 of the Major Port Trust Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby amends the Scale of Rates of the Chennai Port Trust in respect of licensing of space under monthly/annual license basis as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/32/2003-CHPT

The Chennai Port Trust

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Applicant

ORDER

(Passed on this 10th day of September 2003)

This case relates to a proposal received from the Chennai Port Trust (CHPT) for amendments to some of the conditionalities in the Scale of Rates in respect of Licensing of space under monthly/annual license basis.

2.1. The proposed amendments to the Scale of Rates are explained below:

- (i). The CHPT has stated that the existing provisions of licensing of space slowly gives a firm foothold for the existing licensees whereas the genuine parties who need short term facilities may come under the clutches of long-term licensees. The existing provisions and the proposed amendments are tabulated below:

(a). Conditions for licensing of space under monthly license upto eleven months (Clause XIII, Chapter VI):

Existing Clause	Amendment recommended
Licence under monthly licence cannot be renewed for beyond eleven months. If the licensee likes to renew beyond eleven months, the licence fee shall be escalated @ 5% (compoundable per annum) and the conditions applicable for one year and above shall automatically apply.	Under monthly licence, the licence period shall not exceed 11 months at a time. Subsequently, the licence could be renewed for a maximum period of 22 months at two terms of 11 months each. Security deposit equal to 3 months licence fee shall be collected in advance. The Port may at any time with a notice of 2 months resume the property for good and sufficient reasons to be recorded. The licence fee is subject to revision of rates by TAMP from time to time.

(b). Conditions for licensing of space for period of one year and above but below three years (Clause g, Chapter VI)

Existing Clause	Amendment recommended
Licence under one year but below 3 years cannot be renewed for more than 2 years and 11 months. If the licensee likes to renew beyond two years and 11 months the condition applicable for long term lease shall automatically apply such as the licensee shall pay a premium equivalent to one years' lease rentals and shall deposits an amount equivalent to one years' lease rentals as refundable security deposit.	The annual license granted for a period less than three year can be renewed on a year to year basis or periods less than 3 years as the licensee desires but subject to a maximum period of 15 years from the very first date of issuance of licence for the premise. A security deposit equal to 3 months licence fee shall be collected in advance. The licence fee shall bear an escalation of 5% per annum. The licence fee is subject to revision of rates by TAMP from time to time.

- (ii). It has proposed amendment to the conditionality governing licensing of space in transit area for storage of cargoes. The existing provision and the proposed amendment are tabulated below:

Conditions for licensing of space within 30 metres from the berth (Chapter VI)

Existing Clause	Amendment recommended
Applications for the allotment of space should be made in writing by the owners before the deposit of goods, stating their acceptance of all risks and responsibility for goods so stored. Transit area within 100 metres from berth shall not be licensed for storage of import/export cargo.	Application for the allotment of space should be made in writing by the owners before the deposit of goods, stating their acceptance of all risks and responsibility for goods so stored. Normally transit area within 30 metres from the berth shall not be licensed for storage of import/export cargo. The sanction of the Chairman shall be obtained if any area within 30 metres is to be licensed under any special circumstances.

- (iii). The port has proposed insertion of a clause for levy of license fee for warehousing of goods under Customs Bond. It has stated that there is no public bonded warehouse in the CHPT. Three parties have private bonded warehouse approved by the Customs within the port area and proposed the rates for inclusion as given below:-

Item No.	Description of space	License fee	Area
1	Covered space declared as private bonded area (by arrangements between the Customs and Private Agencies)	Rs.3500/- per calendar month or part thereof	Per 50 Sq. Mtrs. or part thereof
2	Open space declared as private bonded area (by arrangements between the Customs and Private Agencies)	Rs.5850/- per calendar month or part thereof	Per 100 Sq. Mtrs. or part thereof

- (iv). The CHPT has further stated that number of licensees enjoyed concessional license fee as per the provision of 1992 Edition of Scale of Rates. The then existing provision is given below:-

Description of space	License fee
Any property belonging to or in possession or occupation of the Board in any place within or outside the limits of the Port for which the rates specified in this Chapter could not be applied and felt unsuitable.	Such licence fee per calendar month or part thereof as may be fixed by the Board meeting in each case.

As such a provision is not found in the revised Scale of Rates, licensees like police station, Inspectorate of Dock Safety, Southern Railway, Postal Department, Corporation School etc., other than long term licensees are required to pay license fee at a higher rate. Therefore, it has proposed a special clause which is given below:

“All such allotments under concessional rate made prior to 9.10.2002 will be treated as long term licence for a maximum period of 25 years commencing from 9.10.2002 itself with rates as at the time of allotment of each of the individual licence. No further allotment under concessional rate shall be made except with the prior approval of the Government and such allotments shall be limited to public utility services. However, for any special reason or for the use of public utility services, any licence is to be granted at a rate lower than what is prescribed in the Government’s guidelines (No. PT-17011/55/87-PT dated 11.3.98) i.e. 25% of the Schedule rates, prior approval of the Government shall be obtained.

2.2. The Board of Trustees of the CHPT has approved the proposal in its meeting held on 24 January 2003

3. In accordance with the consultative procedure prescribed, the CHPT proposal was forwarded to concerned user organisations for their comments.

4. A joint hearing in this case was held on 7 August 2003 at the CHPT premises. At the joint hearing, the CHPT and the concerned users have made their submissions.

5. On a preliminary scrutiny of a proposal, the CHPT was requested to furnish additional information/clarification on certain points.

6. The CHPT has furnished its reply to the various points raised by us. The reply given is briefly furnished as under:-

(i). Monthly licenses up to eleven months:

(a). The escalation factor @ 5% is not applicable to monthly licence up to 33 months due to the reason that many of the monthly licence holders are not willing to get their annual licence converted after 11 months. Further, as per the Government guidelines 5 % escalation is stipulated only for long term annual licence and not for monthly licence.

(b). In case of resumption of possession of the property at Chennai Port, three months notice is given in case of annual licence and one month notice is given in case of monthly licence for vacation. Hence the cost of shifting is borne by the licensee only.

(c). The proposed security deposit equivalent to 3 months licence fee is same as the refundable deposit specified in clause (ix) of the conditions laid down for monthly licence up to eleven months under Chapter VI of the existing Scale of Rates.

(ii). Licencing of space for periods of one year and above but below 3 years:

(a). The tenure of the licence under this category is proposed for a maximum period of 15 years as per the Board Resolution No.161 dt.22.2.2002 while approving the Land Use Plan, which is now pending for approval from the Government.

(b). Presently, almost all cargo storage areas are on annual license basis and the parties have been seeking extension on a year to year basis regularly. In some cases there are surrenders and in some others, request for additional land depending upon the volume expected to be handled. Out of the total allotted open space of 4,06,950.61 sq.mtrs, open space measuring 3,73,410.15 sqm have been allotted to storage of cargo. The plots are also changed depending upon the needs of the party either for consolidation or for the segregation as the case may be. Thus, changes in the areas and the locations of the plots happen even when the licensee is not fully vacating the plots. After considering these aspects, the Board decided that since cargo handling plots are required to be realigned based on various parameters as mentioned above, extension of the annual licence upto a maximum period of 15 years should be considered and that only security deposit equivalent to 3 months need to be recovered because of the fact that the port could detain the cargo itself for non-payment of licence fees.

(c). The licensees hold monopoly over the plots and dictate terms to importers and exporters. It is better to maintain such licences on an annual basis as far as cargo handling storage plots are concerned. Therefore, it was decided by the Board that annual licenses could be extended for a maximum of 15 years on a year to year basis.

- (d). It is admitted that even this system could be misused to circumvent and save the extra cost on account of the premium equivalent to one year's licence fee and security deposit for identical amount.
 - (e). It is, therefore, a case of flexibility in allotment/usage vis-à-vis licenses gaining firmer foothold over the port's land. Further, the Ministry of Shipping in its guidelines dated 28.11.1996 has stated that, the licenses are generally meant for short term use by various traders/port users in the field and such conversion of licence into a lease tantamounts to permitting back door entry to such users and such a practice needs to be discouraged.
 - (f). The proposed security deposit equivalent to 3 months licence fee is same as the refundable security deposit provided under clause (a) of the conditions laid down for licensing of space for periods of one year and above and below 3 years under Chapter VI of the existing scale of Rates.
 - (g). Existing clause stipulate payment of premium equivalent to one years' lease rentals only for allottees under long term licence (i.e. beyond 2 years and 11 months) and not for licenses below 3 years.
- (iii). Charges of Warehousing of goods in bond in the CHPT's public/private bonded area.

Generally the licence fee for the public/private bonded spaces whether it is open or covered should always be higher than that of ordinary spaces. However, in the pre-revised Scale of rates, the licence fee for covered space for storage accommodation was Rs.600/- per 10 sqm which means the licence fee for the private bonded covered area was lower than that of covered space for storage accommodation. Because of this reason, the licence fee for private bonded covered space is proposed to be enhanced from Rs.2625/- per 50 sqm to Rs.3500/- per 50 sqm which is higher than that of licence fee for covered space for storage accommodation (Rs.600/- per 10 sqm). The Authority may consider taking Rs.2625/- per 50 sqm for covered bonded warehouse as Rs.5250/- per 100 sqm and hence the rate may be enhanced to Rs.7000/- per 100 sqm. As the maintenance charges incurred and facilities provided at covered space for storage (like protecting from sun and rain) is much higher than at open space, it is decided by the Board to keep the licence fee for the private bonded covered space at higher rate than the rates for the private bonded open space. Hence it was proposed to enhance the licence fee in respect of private bonded covered space to Rs.3500/- per 50 sqm while maintaining the licence fee in respect of private bonded open space at Rs.5850/- per 100 sqm. Pre-revised rates were introduced on 1.4.2000.

- (iv). Concessional/nominal license fee:
- (a). The list of concessional/nominal allotments made prior to 9 October 2002 is furnished. These allotments were made by invoking clause no. 7 of the Scale of Rates (1992 Edition) under Scale A – Chapter VIII and after obtaining Board's approval for each allotment. Since the said clause has been deleted in the revised Scale of Rates (year 2000 & 2002), all concessional licensees other than those on long term will attract the revised licence fee. Therefore, to continue the concessional rates, it was proposed to incorporate a special clause.
 - (b). The Board of Trustees had resolved to continue the concessional rates as all these allotments were made for the welfare of the employees and for the betterment of the port only.
- (v). There is no relevant guidelines issued by the Government in support of licence for a period up to 3 years (extendable upto 15 years). However, a copy of Government guidelines in support of concessional licence fee is forwarded.

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 are also available at our website www.tariffauthority.org.

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

(i). The Scale of Rates of the CHPT provides for levying license fee for allotment of space. The existing provisions also include conditionalities governing the license fee. The provisions include license fee for allotment of space under monthly/ annual license, one year and above but below three years, long term lease and concessional allotment to Government departments and religious institutions. During the last general revision of its SOR during October 2002, the proposals of the CHPT for modification of some of the conditionalities were accepted. The existing conditionalities are as earlier proposed by the CHPT. In this backdrop, the port has proposed certain amendments to the rates and conditionalities governing the rates for licensing of space. The users have generally endorsed the proposal. The proposed amendments are analysed item-wise in the following paragraphs.

(ii). Monthly Licenses upto eleven months

The proposed amendment is intended to prescribe a maximum ceiling of 33 months for licensing of space under this category. Since the space is proposed to be licensed for a short term of 11 months initially, annual escalation on rent and premium equivalent to minimum one year lease rent will not be applicable.

The proposed amendment also seeks extension of the initial licence tenure for two more terms of 11 months each. The existing provision does not permit this extension. It is noteworthy that earlier this Authority in the case of licencing open/covered area inside the dock interior zone at the Haldia complex had prescribed that the total period of licence including all subsequent extension granted should not exceed 3 years from the date of initial allotment of space. The intention behind this prescription is to apply the relevant provision governing long term leases when the period of allotment exceeds 3 years. Since the CHPT has proposed to allow extensions only upto a period of 33 months, the amendment proposed by the port is approved.

(iii). Licensing of space for periods of one year and above but below three year.

The proposal in this category is to enable the existing licensees to renew the license on annual basis upto a maximum period of 15 years. The system of annual renewal of license may provide flexibility to the port in allotment of space. It is relevant to mention here that in fixing lease rentals and prescribing conditionalities governing the tariffs, this Authority had adopted the guidelines issued by the Government. The Government guidelines governing long term leases prescribe 5% annual escalation on lease rentals and payment of a premium equivalent to minimum one year lease rental to the port. These requirements are not included in the proposed arrangement since the initial tenure is for a short term which is sought to be extended from time to time upto 15 years. As admitted by the CHPT, the year to year extensions may be misused to circumvent the requirements for long term lease. The proposed amendment will mean converting short term license into leases by permitting backdoor entry. This approach has been specifically discouraged by the Government.

The CHPT has stated that its proposal of the Land Use Plan is pending with Government for approval. That being so, it is pre-mature for the port to seek the approval to the amendment which deviates from the existing Government guidelines. This Authority is not in a position to approve the proposed amendment which is contrary to the Government instructions.

(iv) Conditions for licensing of space within 30 metres from the berth.

The proposed amendment introduces a discretionary element to let out space for storage of goods in transit area within 30 meters from the berth. Allotment of operational space is a management issue which should flow from the land use plan of the port. It is not necessary for this Authority to prescribe the extent of clearance from the berth to be maintained for storage of cargo. The port is the better judge in this matter. Since the proposed amendment does not directly relate to a tariff issue, it is not necessary for this Authority to approve it. As a matter of fact, for similar reasons, the existing conditionality prescribing 100 meter clearance from berth is also not necessary to continue in the Scale of Rates. The existing provision in this regard is, therefore, deleted from the Scale of Rates so that the port will have the flexibility to decide on this issue from time to time depending on the operational requirement.

(v) Levy of license fee for warehousing of goods under customs Bond.

The CHPT does not have its own bonded warehouse. It has allowed some private bonded warehouses approved by the customs within the port area. Pointing out that the port does not spend anything extra in the bonded area, the TCC has questioned the differential treatment in rates between the normal lease and bonded warehouse. The CHPT has vaguely responded that it has to take extra care in bonded area.

At the time of last general revision of tariffs of the CHPT, no increase was allowed in the rates relating to estate activity. It is, therefore, appropriate to maintain the pre-revised rates applicable for private bonded area. But then, as pointed out by the CHPT, the rate for open area will be more than the covered area, which is an anomaly. With a view to remove the anomalous position, the CHPT has retained the rate of license fee for open area as same and proposed a hike in the rate for covered area. This approach does not appear to be correct when seen in the light of the fact that this Authority did not allow any increase in the rates under estate activity during the last general revision; nor, the objective now is to allow any increase in rate.

As the port has pleaded that it has to provide extra care at the private bonded area, it is not unreasonable to consider the rates for such bonded area at 20% more than the rates applicable for normal area. This will amount to conceding Rs. 2 per sq.mtr. more than what has been proposed by the CHPT for covered space. Since the proposed rate for covered space of Rs.3500/- per sq. mtr. is less than the rate derived by this approach, the proposal of CHPT is accepted in the case of covered space.

The rates approved for the private bonded area, therefore, are:

- (i). Rs.3500 /- per calendar month or part thereof for covered space per 50 sq.mtr. of part thereof and
- (ii). Rs.2400/- per calendar month or part thereof for open space per 100 sq.mtr. or part thereof.

(vi) Concessional/nominal license fee.

The proposed amendment seeks allotment of port's lands to the identified organisations at concessional rates. It is to be noted that these are the existing leases. The proposed amendment envisages extending the tenure in all such cases for another 25 years from October 2002. The policy guidelines for land/ water front management at major ports issued by the Government in the year 1998 stipulate that lands may be allotted to local bodies/ development authorities for public purposes like construction of roads, bus terminus- cum-depots, schools (not run on commercial basis) by charging a concessional rental of 25% of the scheduled rate. However, the list furnished by the CHPT includes religious institutions, Government departments, banks, etc., and that too at a very nominal rent. The allotment of land for such purposes at concessional rate is a policy issue to be decided by the Government. In any case, this Authority is not the competent authority to allow the allotments on

concessional rates for another 25 years. It is relevant to mention here that the JNPT proposal to approve a nominal lease rent of Re.1 per annum for allotment of school building to an educational institute was not approved by this Authority as the Government approval was still awaited (and, of course, the port had subsequently withdrawn the proposal).

It is, therefore, appropriate for the CHPT to take up the issue with the Government for a policy decision for such extension of allotment on concessional rate. The proposed amendment to the Scale of Rates cannot be approved at this juncture. If the CHPT secures in principle approval of the Government to the proposed arrangement, then this Authority may consider introducing an appropriate conditionality in the Scale of Rates to reflect the Government decision.

9. In the result, and for the reasons given above, this Authority approves the following amendments to the SOR of the CHPT:

(i). The existing clause – XIII, Chapter-VI is deleted and substituted by the following:

“Under monthly licence, the licence period shall not exceed 11 months at a time. Subsequently, the licence could be renewed for a maximum period of 22 months at two terms of 11 months each. Security deposit equal to 3 months licence fee shall be collected in advance. The Port may at any time with a notice of 2 months resume the property for good and sufficient reasons to be recorded. The licence fee is subject to revision of rates by TAMP from time to time.”

(ii). The existing sentence “Transit area within 100 meters from berth shall not be licensed for storage of import / export cargo” in the existing condition 1, under Scale 1, Chapter VI- Miscellaneous charges is deleted.

(iii). The following is added under Chapter VI - Scale 1- as item No. (7) & (8):

Item No.	Description of space	License Fee	Area
7.	Covered space declared as private bonded area (by arrangements between the custom and private Agencies).	Rs.3500/- per calendar month or part thereof.	Per 50 sq.mtr. or part thereof.
8.	Open space declared as private bonded area (by arrangements between the custom and private Agencies).	Rs.2400/- per calendar month or part thereof.	Per 100 sq.mtr. or part thereof.

(A.L. Bongirwar)
Chairman

SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS / DIFFERENT USER ORGANISATIONS AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY

F. No. TAMP/32/2003-CHPT - Proposal from the Chennai Port Trust for amendment in the Scale of Rates in respect of Licensing of space under monthly/annual basis.

1. The comments received from the port users / representative bodies of port users are summarised below:

The Tamil Chamber of Commerce (TCC)

They endorse the proposal of the CHPT considering the present operational difficulties.

Hindustan Chamber of Commerce (HCC)

The proposal of the CHPT is for the benefit of improving the occupancy of space and also to remove the anomalies that had crept in the notified Scale of Rates and hence the proposal of the CHPT may be accepted with no further changes.

2. A copy each of the comments received from the above users was forwarded to the CHPT for comments/information.

3. A joint hearing in this case was held on 7 August 2003 at the CHPT premises in Chennai. At the joint hearing, the following submissions were made:

The Chennai Port Trust (CHPT)

- (i). Explained the proposal.
- (ii). Clauses (2) and (6) may not be in line with the existing Government guidelines. But we have already sent a proposal for land use to Government. It awaits Government approval.
- (iii). At bonded places, we have to provide extra care.
- (iv). We will give reply to TAMP query within 10 days. We will let you know the Government guidelines.

The Hindustan Chamber of Commerce (HCC)

- (i). Concessional rate for 25 years should not be with retrospective effect from 9 October 2002.

- (ii). At bonded warehouse, the space is used as transit shed. Users are getting the benefit. There can be a marginal difference between normal space and bonded warehouse.

The Tamil Chamber of Commerce (TCC)

Why should there be a difference in rate between normal lease and bonded warehouse. After all for bonded arrangement, the port does not Spend anything extra. The rate should be the same as normal open space.

4. Subsequent to the joint hearing, the HCC made the following written submission vide its letter dated 9 August 2003:

- (i). In this proposal we agree with your contention that the guidelines can only be amended on acceptance of the port's Land Policy laid down by the Government and the amendment in the point 1 can be done after the GOI orders are received.
- (ii). If the amendment is not effected then nearly all the plot allotments within the port will have to be revoked. Your suggestion that the current system be adopted until the orders from the Government are received on the land use policy is acceptable. We would appreciate if TAMP could consider notifying that until the orders from the GOI are received the system being followed currently may be continued.
- (iii). In point No.4 on the issue of concessional rents we had suggested that a change in the phrasing of the sentence "All such allotments under concessional rate made prior to 9 October 2002 will be treated as long term license for a maximum period of 25 years commencing from 9 October 2002" to "All such allotments under concessional rate made prior to 9 October 2002 will be treated as long term license only till the term agreed to in the current allotment".

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