

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

Tariff Authority for Major Ports

G.No. 18

New Delhi, 25 February, 2003

NOTIFICATION

In exercise of the powers conferred by Section 49 of the Major Port Trust Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal of the Kolkata Port Trust for relaxation in the some of existing conditionalities in the Schedule of Rent for short term allotment of land inside the Dock Interior Zone of the Haldia Dock Complex as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/81/2002 – KOPT

The Kolkata Port Trust

- - - -

Applicant

ORDER

(Passed on this 4th day of February 2003)

This case relates to a proposal received from the Kolkata Port Trust (KOPT) regarding relaxation in some of the existing conditionalities in the Schedule of Rent for short-term allotment of land inside the Dock Interior Zone of the Haldia Dock Complex (HDC).

2.1. This Authority had passed an Order on 29 October 1999 approving the rent schedule for land and buildings at Haldia Dock Complex. Subsequently, certain modifications to the revised rent schedule were sanctioned by this Authority in its Order No.TAMP/1/97-HDC dated 27 March 2000.

2.2. The KOPT has made the following main points in its proposal:

- (i). Clause 17 of the Notes to the existing rent schedule of the HDC prescribes conditions for short-term allotment of land / covered space (upto one year) within Dock Interior Zone for storage of import / export cargo.
- (ii). The existing clause at item No. 17 (xvi) stipulates recovery of security deposit equivalent to 12 months' rent/licence fee for all types of allotment. If the period of licence is less than one year the security deposit is recoverable at the rate equivalent to the licence fee for the period for which the licence is granted.
- (iii). In view of the fact that the concerned allotments are made on a short term basis, the port users have made representation to the port to relax the condition relating to security deposit to the maximum extent possible.
- (iv). This matter was considered by the Standing Land and Building Allotment Committee (SLBAC); and, it has recommended that Security Deposit for licencing of land inside the Dock Interior Zone may be recovered at the rate equivalent to one month's licence fee. The SLBAC has also recommended reduction of the notice period for extension of license from 15 days to 7 days for better planning of subsequent allotments.
- (v). The Board of Trustees of the KOPT vide Resolution No.80 in its meeting held on 21 June 2002 has approved the following amendments in the notes relating to schedule of rent for land and buildings of the KOPT at Haldia:

Clause 17 (viii) may be deleted and substituted as follows:

"If the licensee requires extension of the licence, an application for extension must be made so as to reach the General Manager (Ops.) at least 7 days before the expiry of the period of the licence. The total period of licence including all subsequent extension granted shall not exceed 3 years from the date of initial allotment of space".

Clause 17 (xvi) may be deleted and substituted as follows:

"The Security Deposit may be recovered at the rate equivalent to one month's licence fee. The security deposit is refundable after completion of licence period subject to adjustment of dues and damages".

2.3. The KOPT has sought approval of this Authority to the proposed amendments in the existing conditionalities.

3. A copy of the KOPT proposal was forwarded to the concerned port users / representative bodies of port users for their comments. A summary of comments received from them are given below:

Tamil Nadu Electricity Board (TNEB)

It has already requested the HDC to reconsider the existing provision for recovery of security deposit for one year; and, to waive security deposit for plots utilised for stacking TNEB thermal coal.

The Tata Iron and Steel Company Limited (TISCO)

- (i). There should be no security deposit for the allotment of land as generally the cost of material is more than the licence fee.
- (ii). Since operations are so dynamic in nature it should suffice to give 7 days notice in advance for extension / vacation of land instead of the existing provision prescribing 15 days advance notice.
- (iii). The existing rate of the HDC is abnormally high in comparison to ports like Paradip. The rates at the HDC should be matched with that of the PPT to attract more cargo to the HDC.

Everett (India) Private Limited (EIPL)

- (i). As per the existing norms, application for land is to be made 15 days in advance. It is requested that the time limit may be reduced to 7 days instead of 15 days particularly for short sea trade.
- (ii). The allotment of land must be made as per the requirement to be notified by the user as against the existing norm prescribing a minimum of 3000 sq. mtr. of land to be taken for a particular vessel.

4. The comments received from the users were forwarded to the KOPT as feed back information / further comments. The comments received from the KOPT in response to the comments of the users are summarised below:

I **On the comments of the TNEB:**

- (i). Considering the request of the trade, it has considered to relax the security deposit clause for short term allotment of land inside Dock Interior Zone requiring the port users to pay security deposit equivalent to one month's licence fee as against existing levy of 12 month's licence fee. The proposed modification is expected to provide a substantial financial relief to the port users.

II. **On the comments of the TISCO:**

- (i). An advance notice of 7 days in case of extension of licence has already been proposed as against the present system of 15 days advance notice.
- (ii). The existing rent schedule has been proposed to be continued (as a separate proposal) till 1 December 2003 and hence it can not be re-opened at this juncture.

III. On the comments of the Everette (India) Private Limited

A minimum quantum of 3000 sq. mtrs. has been fixed to ensure that the valuable space inside the dock is not misused for storing small parcel of cargo at the cost of bulk cargoes requiring larger space. Small parcel of cargo can be dealt under the applicable provision of the Scale of Rates framed under Section 48 of the MPT Act.

5.1. Since the proposal is to provide relief to the concerned users and no serious objection to the proposal has been raised by the users who have been consulted in this proceeding, it has been decided not to set up a port level joint hearing in this case.

5.2. The HDC was requested to indicate the basis of fixing the minimum area of land to be licenced to a particular party at 3000 sq.mt. The HDC has clarified that the minimum parcel load carried by the general cargo vessels at HDC is around 7500 tonnes which requires around 3000 sq. mt. of storage area it has prescribed the minimum storage area to avoid the possibility of misusing valuable space in the Dock Interior Zone for storing small parcels of cargo at the cost of bulk / full ship load of break bulk cargo which require larger space.

5.3. The representative of the HDC who is called in today to offer clarification on various points relating to the proposal has, however, agreed to reduce the minimum area requirement to 2000 sq. mt. and to include it as a conditionality in the relevant Scale of Rates.

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

- (i). The KOPT is deserved to be complimented for presenting this proposal for relaxation in some of the existing conditionalities governing short term allotment of its lands in deference to an appeal made by the concerned users. This user-friendly proposal seeks to reduce the quantum of security deposit from the existing level of 12 months' licence fee to one month licence fee and also to shorten the notice period required for renewal of licence from the existing 15 days to 7 days.
- (ii). It is noteworthy that the existing clause governing payment of security deposit is the same for long term as well as short term allotment of land. It has to be recognised that short term allotment of land is for temporary storage of cargo to facilitate cargo productivity at the port. It will not, therefore, be appropriate to maintain the level of security deposits for these two allotments at the same level. Viewed from this perspective, the proposal of the KOPT to reduce the quantum of security deposits for short term allotment of land inside the Dock Interior Zone is found to be justified and hence by this Authority has no reservation to approve the proposed modification.
- (iii). As has been pointed out by some of the users, the cargo storage requirement may be dynamic which calls for taking the decision to hire space in a short span of time. In recognition of this position, the KOPT has proposed reduction in the notice period for renewal of licence from the existing 15 days to 7 days which is deservedly approved by this Authority.
- (iv). The TNEB and TISCO have requested for total waiver of security deposit. The security deposit collected at the time of allotment is subject to refund at the end of licence period after adjustment of dues payable. Even though the argument of the TISCO that the cost of materials stored will be more than the licence fee payable by which implying that the material can be sold/auctioned to recover in default may be legally correct but any port will like to take such course of action as last resort in view of the practical hassles involved. Further, accepting refundable security deposit from a hirer of a property is a well-established commercial practice. The reduction in the quantum of security deposit proposed by the KOPT now will go to lessen the burden on

the user. In this backdrop, this Authority is not in favour of a complete waiver of security deposit.

- (v). The TISCO has raised another point about the existing rates for short term allotment of land at the HDC. It has also made an exhaustive comparison of the relevant rates obtaining at the PPT and the HDC. In many earlier cases, this Authority has held that the concepts, principles and norms governing tariff setting at different ports should be the same; and, the individual rates need not be the same across all the ports. Further, the issue of revision of the existing licence fee at the HDC is not under consideration now. That being so, the TISCO may, if it desires so, agitate this issue when the proposal for revision of rates of rent for lands at the HDC comes up for consideration.
- (vi). The Everett (India) Private Limited has raised a point about the minimum plot size allotted by the HDC. It is to be recognised that relevant schedule of rent does not contain any conditionalities about the allotment of land is subject to a minimum area of 3000 sq.mt. The practice of prescribing of minimum plot size may have been introduced by the port on operational consideration. Nevertheless, it will be more transparent if such a conditionality is explicitly included in the schedule of rent itself in view of the tariff implication arising out of the practice adopted by the Port. When pointed out, the HDC has agreed to reduce the minimum area requirement to 2000 sq.mt. and to include it as a conditionality in the Schedule of Rent. While allowing this modification as an interim arrangement, this Authority likes to advise the KOPT to examine this issue further and come up with a suitable proposal at the time of the next review/revision of the existing rates.

7. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the following amendments to the schedule of rent for land and buildings of Kolkata Port Trust at Haldia :

- (i). The existing clause No 17 (viii) is deleted and substituted by the following:**

"17.(viii). If the licensee requires extension of the licence, an application for extension must be made so as to reach the General Manager(Ops.) at least 7 days before the expiry of the period of the licence. The total period of licence including all subsequent extension granted shall not exceed 3 years from the date of initial allotment of space."

- (ii). The existing clause No 17(xvi) is deleted and substituted by the following:**

"17(xvi). The security deposit may be recovered at the rate equivalent to one month's licence fee. The security deposit is refundable after completion of licence period subject to adjustment of dues and damages."

- (iii) The following provision is inserted as clause no. 17 (xxiii):**

"17.(xxiii). The minimum area to be licenced to a single licensee will be 2000 sq. mt."

(A.L. Bongirwar)
Chairman