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TARIFF AUTHORITY FOR MAJOR PORTS

G. No. : 5

New Delhi, 12 January 2006

NOTIFICATION

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal of Tuticorin Port Trust for revision of lease rent of the land leased out to M/s. Southern Petrochemical Industries Corporation Limited at VOC wharfs as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/44/2005 - TPT

ORDER

(Passed on this 27th day of December 2005)

The Tuticorin Port Trust (TPT) has filed a proposal for revision of lease rentals of the land leased out to M/s. Southern Petrochemical Industries Corporation Limited (SPIC) at VOC Wharfs.

2. The lease rentals of the land leased to M/s. SPIC Limited at VOC wharfs was last revised by this Authority in May 2000. This Authority in the said Order had approved lease rent of Rs.555/- per sq.mtr. per annum w.e.f. 1 January 1997. As per the clause 4 of Lease Agreement entered by the TPT with SPIC, lease rent is subject to upward revision on expiry of every five years. Accordingly, as per the terms of lease deed, lease rentals for this land fell due for revision in January 2002.

3. In this backdrop, the TPT has proposed for revision of lease rentals for land leased out to M/s. SPIC Limited at VOC wharf with retrospective effect from 1 January 2002. The TPT has made the following main points:

- (i). M/s. SPIC was allotted port's land measuring 2325 square metres and 1085 square metres in the VOC wharf on long term lease of 30 years with effect from 1.4.99 and 20.1.81 respectively.
- (ii). Clause 4 of the lease deed entered into with M/s. SPIC provides that the lease rent is subject to upward revision with effect from 1.1.1987 and thereafter on expiry of every 5 years. Accordingly, the lease rent was revised to Rs.555/- per square metre per annum for the period 1.1.1997 to 31.12.2001. The lease rent is due for revision from 1 January 2002 onwards.
- (iii). It has, therefore, proposed to revise the lease rent applicable for the 5 years period from 1.1.2002 to 31.12.2006 at Rs.708/- per sq.mtr. per annum considering annual escalation of 5% on compoundable basis from the lease rental last fixed by this Authority.
- (iv). It has sought approval of the proposed rate with retrospective effect from 1 January 2002.

4. A copy of the proposal received from the TPT was forwarded to M/s. SPIC Limited for their comments. The comments received from M/s. SPIC Limited were forwarded to TPT as feedback information. The TPT has furnished its response to the comments of the M/s. SPIC Limited.

5.1. This Authority while approving the lease rentals for land allotted to M/s. SPIC Limited in May 2000 had noticed some difficulties in ascertaining whether the same cost elements have been counted twice in calculation of wharfage of phosphoric acid as well as storage area rentals. In this regard, the TPT was requested to review its base lease rentals and ascertain that some of the common elements included in arriving at the lease rentals are not considered in the wharfage rate for phosphoric acid. The outcome of this analysis was, however, not furnished by the TPT alongwith its proposal. The TPT was, therefore, requested to examine the matter and furnish the details. The TPT was also requested to explain the reasons for delay in submission of its proposal for revision of lease rentals which fell due for revision in January 2002.

5.2. The TPT has furnished its reply in this regard which is summarised below:

- (i). It has been examined and ensured that no component included in the computation of lease rentals had been considered in the calculation of wharfage rate for phosphoric acid. Initially, wharfage rates were fixed by the port based on the rates prevailing in

the sister ports and thereafter by the TAMP alone. As per the lease agreement between the port and M/s. SPIC Limited, the latter has to pay both wharfage rate and lease rent separately as revised from time to time.

- (ii). No relationship could be established between lease rent and wharfage rate calculations and hence, there is no chance of duplication of cost calculations.
- (iii). There is no escalation clause in each year, as normally available in all leases. The revised lease rental is computed based on weighted average working out to Rs.780/- per square metre per annum based on the 1997 cost working and Rs.759/- per sq. mtr. per annum based on the rate approved by the TAMP in 2000.
- (iv). It has accordingly requested the Authority to approve the revised lease rate of Rs.759/- per sq. mtr. per annum instead of Rs.708/- per sq. mtr. per annum proposed earlier for the period of 5 years from 1 January 2002 for the land leased out to M/s. SPIC Limited at VOC Wharf for installation of Phosphoric Acid Storage tanks.
- (v). It has submitted that the delay in filing the proposal before expiry of the validity of the rate was due to misplacement of files and has requested to condone the same.

6. A joint hearing in this case was held on 9 December 2005 at the TPT premises. At the joint hearing, the TPT and M/s. SPIC Limited have made their submissions.

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 <http://tariffauthority.gov.in>

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

- (i). The lease rent for the land in reference was last fixed by this Authority in May 2000 with retrospective effect from 1 January 1997. Following the usual validity period in such cases, the lease rent had fallen due for review in January 2002 and hence the proposal. It is relevant here to note that the concerned lease agreement provides for quinquennial revision of rent.
- (ii). At the time of the last review, this Authority had certain apprehensions about double counting of some cost elements in arriving at the proposed rates. The approach adopted by this Authority, therefore, was to allow a straight increase of 25% over the base rate relying on the Government guidelines of providing 5% automatic annual escalation, since the rate was revised after a gap of 5 years. The TPT has more or less adopted the same approach while proposing the revised rates.
- (iii). This Authority follows the Government guidelines on port land management for prescribing the lease rents. It is noteworthy that the existing guidelines were announced by the Government in March 2004. The period covered by the reference before this Authority is prior to the implementation of the revised guidelines. The case is, therefore, examined in the light of the pre-revised guidelines.
- (iv). Generally, lease rent is fixed based on the prevailing market value of the land in the vicinity. In this case, the concerned piece of land is located right inside the operational area which might have posed problems for the port to assess the market value. The port, therefore, wants to fix the revised rate by applying the cumulative annual escalation factor alone to the base value of January 1997.
- (v). As can be seen from the written submission made by the SPIC, it has not objected to upward revision of the lease rent. Nor it has any reservation to the retrospective revision. Its request is to moderate the increase proposed by the TPT. It has to be

recognised that the constraints it faces in its business environment cannot be the sole factor guiding the rate fixation for the TPT property leased to it.

- (vi). As stated earlier, the lease agreement entered by the Tuticorin Port Trust (TPT) with M/s. Southern Petrochemical Industries Corporation Limited (SPIC) provides for upward revision in the lease rental every five years. It, however, does not mention anything about the quantum of such revision. The peculiarity of this lease agreement is that it does not provide for automatic annual revision in the lease rental which is normally prescribed in the other leases.

If the lease rental of Rs.555/- per sq. mtr per annum approved for the period beginning from 1 January 1997 to 31 December 2001 was escalated by 5% annually, as per the escalation clause prescribed in the earlier Government guidelines, the notional lease rentals for the land would have been Rs.708/- per sq. mtr. per annum as on 1 January 2002. In the absence of any specific clause in the lease agreement about the quantum of upward revision in the lease rental, it is found appropriate to prescribe the lease rentals for the land allotted to M/s SPIC Ltd. at Rs.708/- per sq mtr. per annum for the period 1 January 2002 to 31 December 2006 as proposed by the TPT in its initial proposal.

The TPT has subsequently proposed revised lease rental of Rs.759/- per sq mtr. per annum based on the weighted average rate approved by this Authority in May 2000. This proposal seeks to take the annual escalation, atleast in part, in advance and tantamounts to introducing such a condition which is not in the lease agreement. The revised proposed rate cannot, therefore, be considered for acceptance.

- (vii). As stated earlier the lease rental for this land was due for revision in January 2002 itself. There has been an inordinate delay of almost three years on the part of the TPT in filing its proposal for revision of lease rental. The TPT has clarified that this delay was due to misplacement of the relevant file and has requested to condone the delay. It is suggested that TPT enquires into the matter and take appropriate action against those who are responsible for misplacement of file.

This Authority under the ordinary circumstances does not approve the rates with retrospective effect. In the instant case, the lease agreement provides for revision of rates once in year and the lessee also has not objected to the retrospective revision. Further, there is a precedent of implementation of such retrospective revision earlier. That being so, this Authority condones the delay on part of the TPT in filing its proposal and approves the rate with retrospective effect from 1 January 2002. The TPT is advised to file its proposal for the next review of the lease rental well before the expiry of its validity.

9. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the lease rent for land at VOC wharfs allotted to M/s SPIC Limited by TPT at Rs.708/- per sq. mtr. per annum with retrospective effect from 1 January 2002. The rate approved will remain valid till 31 December 2006.

(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/44/2005 - Proposal from the Tuticorin Port Trust for
- TPT revision of lease rent of the land leased out to
**M/s. Southern Petrochemical Industries
Corporation Limited at VOC wharfs.****

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1. The comments received from the M/s. Southern Petrochemical Industries Corporation Limited are summarised below:

(i). The TPT has proposed 28% increase in the lease rent which is exorbitant.

(ii). The fertilizer price is being controlled by Govt. of India and the difference between the cost of production and the selling price is being given as subsidy. This price structure does not cover any change in the lease rentals. Hence the proposed increase of 28% in the lease rent will be a substantial burden on it.

(iii). It has, therefore, requested to consider 5% increase in the lease rent once in 5 years.

2. Comments received from M/s. SPIC Limited were forwarded to the TPT as feed back information / comments. The TPT has responded on the comments of M/s. SPIC Limited. The main points are summarised below:

(i). The increase proposed in the lease rent is as per the conditions stipulated in the Lease Agreement entered between M/s. SPIC Limited and the port. It is also in accordance with the Orders passed by the TAMP on 12 May 2000 by the TAMP in this regard during the previous

revision. The proposed upward revision in lease rentals is not exorbitant.

- (ii). The lease rent is meant for the port's land used by the lessee. Any upward or downward fluctuations in the market price of the commodities produced by the lessee is not a relevant parameter while considering revision of lease rentals.
- (iii). The request of SPIC Limited for 5% increase in the lease rent once in 5 years is not justifiable.

3. A joint hearing in this case was held on 9 December 2005 at the TPT premises. At the joint hearing, the TPT and M/s. SPIC Limited have made the following submissions:

M/s. Southern Petrochemical Industries Corporation Limited

- (i). We feel charges should be levied on cargo handled. Why should there be 5% increase in the lease rent annually (TPT says, they ask for increase once in 5 years; and, there is no automatic annual escalation in this case).

Tuticorin Port Trust

- (i). We have subsequently made a change in the proposed rate which we have conveyed to TAMP. SPIC may also take note of it (SPIC confirms that they are aware of the modification).
