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Tariff Authority for Major Ports

G.No. 166

New Delhi,

16 August 2007

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 disposes of the proposal from the Tuticorin Port Trust (TPT) for revision of lease rent for the land leased out to M/s Southern Petrochemical Industries Corporation (SPIC) Limited at VOC wharfs for installation of phosphoric acid storage tanks as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/13/2007 - TPT

Tuticorin Port Trust

Applicant

ORDER

(Passed on this 7th day of August 2007)

This case relates to a proposal from the Tuticorin Port Trust (TPT) for revision of lease rent for the land leased out to M/s Southern Petrochemical Industries Corporation (SPIC) Limited at VOC wharfs for installation of phosphoric acid storage tanks.

2. The lease rent of the land allotted by TPT to SPIC was last revised by this Authority in December 2005 to Rs.708/- per sq. mtr. per annum which is valid for the period from 1 January 2002 to 31 December 2006.

3. The TPT has made the following points in the proposal:

- (i). SPIC was allotted 2325 sq. mtr. and 1085 sq. mtr. of land in the VOC wharf area with the approval of Government of India on long term lease for a period of 30 years for installation of Phosphoric Acid Storage Tanks. The two pieces of land were allotted with effect from 1 April 1979 and 20 January 1981 respectively.
- (ii). The lease deed entered into with the SPIC, provides for upward revision in lease rent with effect from 1.1.1987 and thereafter on expiry of every 5 years. Accordingly, the lease rent was revised and fixed at Rs.555/- per sq. mtr. per annum for the period 1 January 1997 to 31 December 2001 and was subsequently revised to Rs.708/- per sq. mtr. per annum from 1 January 2002 to 31 December 2006.
- (iii). The lease rent last approved by the Authority expired on 31 December 2006. It has, therefore, filed the instant proposal to revise the lease rent to Rs. 2400 per sq. mtr. for five years period from 1 January 2007 to 31 December 2011 by following the guidelines issued by the Government on the land policy for Major Ports.

4. In accordance with the consultative procedure prescribed, the proposal received from TPT was forwarded to SPIC for their comments. A copy of the comments received from SPIC was forwarded to TPT as feedback information. The TPT has furnished its observations on the comments of the SPIC.

5. Based on a preliminary scrutiny of the proposal, the TPT was requested to furnish additional information/clarifications on a few points. The TPT has furnished its reply. A summary of the queries raised by us and clarifications furnished by the TPT are tabulated below:

Sr.No.	Queries raised by us	Reply furnished by TPT
(i).	From the proposal it is understood that the lease of one piece of land allotted to SPIC Ltd. in April 1979 will expire in April 2009 and another piece of land allotted on 20 January 1981 will expire in January 2011. Explain why the lease rentals are proposed to be revised for five years period from 1 January 2007 till 31 December 2011, which goes beyond the expiry of these leases.	In long-term leases, lessees normally request the port to extend the period of lease or renew it. The same will be done in deserving cases after due examination and approval by the Government of India. In presumption of the above, revision is requested beyond the period of lease.

(ii).	<p>Explain the basis of arriving at the proposed lease rentals of Rs.2400/- per sq. mtr. per annum. Also, confirm whether the proposed rate is arrived at based on the land policy guidelines issued by the Government in February 2004.</p>	<p>(a). The TPT has made a comparison of lease rent premium obtained for the land outside the wharf area i.e. outside Green Gate for the period from 2002 to 2006. The highest competitive bid price obtained in 2005 for such lease of land is Rs. 3505/- per sq.mtr. towards upfront premium for 30 years. This increase works out to be 2.37 times i.e., 237% with reference to the reserve price of Rs. 1040/- per sq.mtr. fixed in 2002.</p> <p>(b). Based on the above rationale, the lease rates for the land allotted to SPIC is proposed for an upward revision of 238% despite the fact that the land in the wharf area leased out to SPIC is significantly more valuable than the land area outside Green Gate.</p> <p>(c). The proposed increase in lease rent is in compliance with the guideline No. 5.3. (I) (a) (iii) of Land Policy for Major Ports announced by the Government in February 2004. Clause 5.3. (I) of the Government guidelines lists out the various factors for determining the market value of land by the Committee constituted for the purpose of recommending the rates to TAMP. Clause 5.3. (I) (a)(iii) prescribes highest accepted tender of port land for similar transaction as one of the factors for determining the market value of land.</p>
(iii).	<p>During the last revision, the TPT had proposed to revise lease rentals in respect of land allotted to SPIC by applying the then applicable annual escalation factor 5% per annum as per the government guidelines over the pre-revised lease rentals. As per the revised land policy guidelines issued by the Government in March 2004, the lease rentals should be escalated by 2% per annum. In this context, justify the proposed increase of 238% in the lease rentals from the present level of Rs.708/- per sq. metre per annum to Rs.2400/- per sq. metre per annum.</p>	<p>(iii). As per the land policy guidelines of the Government, clause 5.3 (I) (c), states that Scale of Rates shall be escalated by 2% per annum till such time that the rate is revised with the approval of the Competent Authority/TAMP. Further as per 5.3 (I) (d) of the said Policy, Scale of Rates should be revised every five years. In the above context, the existing lease rent of Rs.708/- per sq.mtr. approved by the TAMP with effect from 1 January 2002 is escalated by 2 % per annum, upto 31 December 2006 and a proposal for revision is submitted after a term of 5 years with effect from 1 January 2007 in consonance with land policy guidelines No.5.3(I) (a)(iii) based on the market valuation of land considering the highest accepted tender of land outside the wharf area.</p>

6.1. A joint hearing in this case was held on 13 July 2007 at the premises of the Tuticorin Port Trust. At the joint hearing, the TPT and SPIC made their submissions.

6.2. At the joint hearing, the SPIC has filed written submissions reiterating the points made by it earlier. A copy of these submissions are also endorsed to TPT. Subsequent to joint hearing, the SPIC has filed further written 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 party will be sent separately to the relevant party. These details will also be made available at our website <http://tariffauthority.gov.in>

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

- (i). The lease in reference is governed by a specific Lease Agreement signed between the Tuticorin Port Trust and the Lessee - Southern Petrochemical Industries Corporation (SPIC) Ltd for a 30 year period. The Lease Agreement provides for an upward revision in the lease rent w.e.f. 1 January 1987 once in every 5 years. The lease rent for the land in reference was last fixed by this Authority in December 2005 with retrospective effect from 1 January 2002 prescribing five years validity period. Accordingly, the lease rent had fallen due for revision on 1 January 2007.
- (ii). The revised tariff policy guidelines issued by the Government require this Authority to follow the land policy guidelines of the Government insofar as fixing rates for lease of port property.

The land policy guidelines announced by the Government in February 2004 specifies various factors for determining the market value of port land. Accordingly, the market value is to be determined taking into account any or all of the factors like State Govt's ready reckon value, the average rate of actual transactions in last three years for the lands in the port's vicinity, highest accepted tender value of port lands for similar transactions, rate arrived at by the approved valuer and any other relevant factors. The proposal submitted by TPT is reportedly based on the Government guidelines issued in February 2004.

The lease rent for land allotted to SPIC is proposed based on the appreciation in the market value of land during the period 2002 to 2006 in respect of land outside the wharf area.

The highest competitive bid price for the land outside the wharf area is reported at Rs. 3505 per sq. mtr. in the year 2006 towards upfront premium for 30 years with reference to the reserve price of Rs. 1040 per sq. mtr. fixed in 2002. The percentage increase of 237% in the market value of land thus obtained with reference to land outside the wharf has been considered for arriving at lease rent for land allotted to SPIC.

- (iii). The SPIC has objected the proposed lease rent based on the prevailing market value of land outside the wharf considered by the TPT. It has requested to continue with the prevailing lease rent, as the lease period will be over in 2008 and 2009.

The lease agreement provides for upward revision in the rate once in every five years. Hence the contention of the SPIC to continue with the existing lease rent does not merit consideration. It is also relevant here to mention that the LA does not restrict the quantum of such revision.

Generally, lease rent is fixed based on the prevailing market value of the land in the vicinity. In the instant case, since the concerned piece of land is located right inside the operational area, it might have posed problem for the port to assess the market value of the land. As mentioned earlier, the TPT has, therefore, considered the highest accepted tender of port land for similar transaction as the factor for determining the lease rental of land allotted to SPIC in line with the Government guidelines.

- (iv). As clarified by TPT, it cannot be denied that the value of land inside the wharf area, which is the prime location of the operational area of the port, will undoubtedly be more than the value of land outside the wharf area. Generally, such lands in operational area are assigned on common user basis for storing cargo for which storage / demurrage charge are collected at the rate prescribed in the Scale of Rates. The SPIC, however, enjoys exclusive right to store its cargo without paying any demurrage charges to the Port by virtue of the lease granted to it. The contention of TPT is that if storage charge is applied on the cargo handled by SPIC at the existing tariff level prescribed in its Scale of Rates it would have been manifold in comparison to the lease rent proposed for the land allotted to SPIC.
- (v). The SPIC has also attempted to compare the prevailing lease rent for similar storage facility inside Chennai Port. Prima facie, such a comparison does not appear to be

appropriate as port tariff widely varies from port to port. The point made by SPIC about payment of wharfage on the Minimum Guaranteed Throughput is not relevant to the issue in hand. Except making some general observation about exorbitant increase, SPIC has not made any pointed case for not accepting the proposal of TPT.

It is noteworthy that the rates approved by this Authority are ceiling levels only. A port trust, at its discretion and obviously on commercial consideration, can operate below the ceiling rate.

- (vi). As the lease rent proposed by the TPT is in line with the Government guidelines for fixation of lease rental, this Authority is inclined to approve the proposed lease rents subject to excluding the annual escalation considered by the TPT for arriving at the proposed lease rent as explained in the subsequent analysis.
- (vii). The lease agreement entered by the Tuticorin Port Trust with SPIC does not provide for automatic annual revision in the lease rental which is normally prescribed in the other leases. In view of this, this Authority while prescribing the lease rental for the last quinquennium 1 January 2002 to 31 December 2006 did not approve any automatic annual escalation in the lease rental. That being so, the proposed increase of 237% obtained based on market value of land outside the wharf is applied on the lease rent last approved by this Authority without applying any annual escalation. Accordingly, the revised lease rent for the land allotted to SPIC is approved at Rs.2386 per sq. mtr. per annum instead of Rs.2400 per sq. mtr. per annum proposed by the TPT.
- (viii). As stated earlier, the lease rental for this land was due for revision in January 2007 itself and the lease agreement provides for revision of rates once in five years. That being so, this Authority approves the rate with retrospective effect from 1 January 2007.

The TPT has reported that the two pieces of land were allotted to SPIC for 30 years lease with effect from 1 April 1979 and 20 January 1981 respectively. Accordingly, the lease of one piece of land allotted to SPIC Ltd. in April 1979 will expire in April 2009 and another piece of land allotted on 20 January 1981 will expire in January 2011.

The TPT in its initial proposal had proposed to apply the revised lease rental till 31 December 2011, which goes beyond the expiry of these leases. Subsequently, it has admitted that the revised lease rental will be applicable for the balance period in the respective leases. Accordingly, the revised lease rent approved by this Authority will be co-terminus with the expiry of the respective lease agreements signed between the TPT with the SPIC.

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 SPIC by TPT at Rs.2386 per sq. mtr. per annum with retrospective effect from 1 January 2007. The rate approved will be co-terminus with the expiry of the respective lease agreements between the TPT and SPIC.

(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/13/2007-TPT - Proposal from the Tuticorin Port Trust for revision of lease rate for the land leased out to M/s Southern Petrochemical Industries Corporation Limited at VOC Wharf for installation of Phosphoric Acid storage tanks.

1. The summary of the comments received from M/s Southern Petrochemical Industries Corporation Limited (SPIC) and the comments of the Tuticorin Port Trust (TPT) thereon are summarised below:

Sr.No.	Comments of SPIC	Comments of TPT
(i).	An increase of 28% was allowed from the pre-revised rate during the last revision. At that time itself, a request was made to consider revision @ 5% for every five years period, which was not acceded to.	The proposal for revision of lease rent for the land leased out to SPIC is submitted as per clause 4 of the Lease Agreement signed between both the parties which inter-alia provides for an upward revision in lease rent every 5 years. Such revision should also invariably be in compliance with the land policy guidelines for Major Ports issued by the Government of India from time to time.
(ii).	The present proposal of TPT to revise the existing lease rent from Rs. 708 per sq. mtr. per annum to Rs.2400 per sq. mtr. per annum from the year 2007 onwards amounts to an enhancement of about 340% over the current lease rent. It is phenomenally high and there is no rationale for such an increase at this juncture when fertilizer industries are experiencing difficulties in sustaining operations. The proposed revision of the lease rent will make the entire operations unviable. It has, therefore, requested to consider revision of lease rent in line with the earlier practice considering that they have been the anchor customer of TPT since the beginning.	

2.1. A joint hearing in this case was held on 13 July 2007 at the premises of the Tuticorin Port Trust. At the joint hearing, the TPT explained the proposal. At the joint hearing, following submissions were made:

Southern Petrochemical Industries Corporation Limited

- (i). The proposed rate is very high and does not appear to follow any guidelines.
- (ii). We request the existing rates to be maintained.

- (iii). We pay Rs. 25 lakhs per annum now. If proposed rates are imposed, we have to pay Rs. 80 lakhs per annum.

Tuticorin Port Trust

- (i). We fully agree with TAMP's observation that the revised rate should apply only for the remaining tenure of lease and not for 5 years.
- (ii). Phosphoric acid handled by SPIC has drastically reduced. If they don't want the land they can surrender land. It is a valuable assets and user community as a whole can the enjoy benefit, if it is put for common use.
- (iii). If we apply storage charges approved in Scale of Rates to SPIC cargo, the revenue realisation would have been manifold more. The proposed lease rent is only a fraction.

2.2. Subsequent to joint hearing, SPIC has made further submissions. Some of the main submissions made by SPIC in addition to the comments furnished earlier are highlighted below:

- (i). Tuticorin Port Trust has clarified that steep increase in the proposed lease rent is because it is based on the prevailing market value of the land. In its opinion, proposing the rates offered for a small piece of land meant for weighbridge alongwith main road with a large piece of land for an industrial activity with provision to pay for Minimum Guaranteed Traffic (MGT) is not fair.
- (ii). Even the present lease rent of Rs. 708 per sq. mtr. per annum paid to TPT is on the higher side, in comparison to the prevailing lease rent in Chennai and other ports. It has substantiated its claim by indicating the prevailing lease rent for similar storage facility inside Chennai Harbour is about Rs. 306 per sq. mtr. per annum.
- (iii). In addition to lease rental, it also pays wharfage charges for acid handled with a clause of Minimum Guarantee Traffic for the leased land. The Tuticorin Port is applying the clause of collection of wharfage on Minimum Guaranteed Traffic, even though Government in its guidelines on Land Policy on Major Ports advised to dispense with that clause. The proposed hike in lease rent of the land to 3.4 times is, therefore, unjustified.
- (iv). Since, the agreement between SPIC and Tuticorin Port Trust for the above piece of land is coming up for renewal during 2009 and 2011, TAMP is requested to maintain the same lease rental till end of the lease period and revision of lease rental can be considered during the renewal of the lease agreement.
- (v). Fertilizer industry is totally under the control of the Government and the selling price of the finished product is fixed by Govt. The difference between the selling price and cost of production is reimbursed to the Company by the Government as concession. As this expenditure is not recognised by the Government in estimating the cost of production and also based on the merit of our submission, it has requested to consider maintaining the existing lease rent.
