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Tariff Authority for Major Ports

G. No. : 186	New Delhi , 3 December 2004
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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 of the Tuticorin Port Trust (TPT) for revision of lease rents of port lands as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/35/2003-TPT

The Tuticorin Port Trust (TPT)

Applicant

O R D E R

(Passed on this 18th day of November 2004)

This case relates to a proposal from the Tuticorin Port Trust (TPT) for revision of lease rents of port lands for a period of five years from 1 July 2002.

- 2.1. The TPT has made the following points in its proposal:
- (i). The existing lease rentals were approved by the TAMP vide Order dated 1 July 1997 for a period of five years and subsequent amendment was made vide Order dated 13 August 1999. The lease rentals are already due for revision from 1 July 2002.
 - (ii). In line with the policy guidelines issued by the Government for land and water front management, a Committee was constituted under the Chairmanship of the Chairman TPT with members representing from Ministry of Shipping, District Revenue Officer, etc., for revising the base value of lands based on the market value.
- 2.2. The salient points of the Report of the Committee and its recommendations with reference to fixation of lease rents of the TPT for the period 2002–2007 are as follows:
- (i). The proposed lease rents have been arrived at following the same methodology as considered during the last revision of lease rentals during 1997.
 - (ii). The land cost is based on the average market value of land obtained from Revenue Department for different categories of lands.
 - (iii). The development cost of lands allotted in Zone 'A' for the year 2002 has been arrived at by applying 10% annual escalation factor over the development cost of land prevailing during the year 1997. Annual escalation factor of 10% considered in the computation is in line with the average annual increase of about 7% in the Cost of Acquisition Index relating to capital gain of Income Tax for the last five years.
 - (iv).
 - (a). The proposed lease rents have been worked out considering a return of 12% on the average cost of land and 18% on the development cost of land as was considered during the last revision.
 - (b). In case on lands at Zone 'B', the development cost has not been considered for arriving at the proposed lease rent since the port has not incurred any expenditure for development of lands in Zone 'B'.
 - (v).
 - (a). It has pointed out that during the 1997 revision, the lease rents for lands for service / residential purpose and industrial purpose were prescribed at the same level at both Zone A and Zone B.
 - (b). It has recommended to classify Zone B lands into port related activity and non-port related activity. For the land used for port related activity under service/ residential and industrial purposes, lease rentals are

proposed to be maintained at the same level as Zone A. For non-port related activity, higher lease rents are proposed.

2.3. Based on the recommendations of the Committee, the TPT has proposed the following:

- (i). Allotment of different categories lands at Zone B will be segregated into port related activity and non-port related activity.
- (ii). The lease rent for lands allotted in Zone B for port-related activities is proposed to be same as the lease rent for respective categories of lands at Zone 'A'.
- (iii). The existing lease rents and the revised lease rent proposed by the TPT are tabulated below:

(Rate in Rs.per sq.mtr. per annum)

Sr. No.	Purpose	Rates as approved vide Order dated 1 July 1997.		Existing rate applicable from 1 July 2001 to 30 June 2002 reckoning 5% annual escalation		Proposed rate		
		Zone A	Zone B	Zone A	Zone B	Zone A	Zone B	
							Port related	Non-port related
1.	Service and Residential	14	14	17.02	17.02	23	23	69
2.	Industrial	26	26	31.60	31.60	42	42	126
3.	Commercial	42	142*	51.05	172.60	68	68	204

* Allotment of land on short term basis for commercial purpose.

- (iv). Annual escalation factor of 5% (compoundable) shall be applied on the proposed lease rent.
- (v). Classification of existing licenses in Zone-B as port related and non-port related will be as follows:
 - (a). All existing licenses except Diesel Bunk inside Zone B are port related. Diesel Bunk allotted to M/s. HPCL inside Zone B will be classified as non-port related.
 - (b). Two plots of land in Zone B were allotted on tender basis for marine spare parts business. In these cases, the higher of the proposed rate or the tender value will be made applicable.
- (vi). The port has sought for retrospective implementation of the proposed lease rents from 1 July 2002 for period of five years till 30 June 2007

2.4. The proposal was approved by the Board of Trustees of the TPT on 28 March 2003.

3.1. In accordance with the consultative procedure prescribed, the proposal was forwarded to the concerned user organisations for their comments. Comments received from the users were forwarded to the TPT as feed back information / comments.

3.2. We have not received any response from the TPT on the comments of any users except Tuticorin Port Land Users Welfare Association (Zone 'B').

4.1. Based on a preliminary scrutiny of the proposal the TPT was requested to furnish additional information on a few points.

4.2. In response to the queries raised by us, the TPT has furnished the requisite details which are summarised below:

- (i). Details about area of land available with the port, land allotted for various activities, definition of various terms, etc., have been furnished.
- (ii). The cost statement furnished for the estate activity depicts deficit of 34.64% for the year 2003-04 before considering return on capital employed. The impact of the proposed lease rent on the revenue has not been indicated in the cost statement.
- (iii). The market value of land has been ascertained from the local revenue authorities. No separate value exists for each category. The development cost is based on the total expenditure incurred by the Port for the development of roads and other infrastructure facilities like water, electricity, etc., during the last five years. Category-wise development cost is not maintained.
- (iv). For the purpose of arriving at the development cost, 10% annual escalation has been considered in view of the huge cost incurred by the port for providing facilities to users such as repair/formation of roads, additional water supply scheme, etc. which is far less than the actual expenditure incurred by the Port.
- (v). The 3% contribution towards each of the two mandatory reserves is to be allowed on development cost as part of element towards return on capital employed, as approved by TAMP.
- (vi). The return of 6% allowed for revision of lease rate for land leased out to M/s. TSMC is not comparable to other areas in the Port. A concessional rent was fixed for land leased to TSMC for production of salt, which is a low value item. These reasons/grounds are not applicable to other lands of the Port leased/licensed for different purposes.
- (vii). It has considered average of the market value obtained by the Revenue Authorities for the lands in the adjacent areas. The Committee has considered the transactions in the vicinity of the port in the recent past to arrive at the market value.
- (viii). In view of the objection raised by some of the Trustees and representation received from the lease holders about high lease rent proposed by the Committee at Zone B, the Board of Trustees of the TPT decided to propose the rate of Rs.68.00 per sq.mtr. per annum for the land leased for Port related commercial purposes in Zone B as proposed for Zone A.

5. A joint hearing in this case was held on 19 February 2004 at the TPT premises. At the joint hearing, the TPT and the concerned users have made their submissions.

6.1. It was decided at the joint hearing that the TPT would furnish revised calculation of lease rentals considering 6% return on the market value of land and the historic value of development cost incurred.

6.2. In response the TPT has furnished revised working wherein two sets of calculation have been furnished - one reckoning the actual development cost and the other considering development cost as per its original proposal (i.e. 1997 development cost + increase of 10% per annum to account for the development cost incurred subsequently). A summary of the revised calculation of lease rentals w.e.f. 1 July 2001 is tabulated below:

			Revised Calculation - I		Revised Calculation – II	
Sl. No	Purpose	Market value of land (Rs in lakhs/acre)	Actual Development cost (Rs. in lakhs/acre)	Revised lease Rentals (6% return on land and 18% on actual development cost). (Rs. per sq. mtr./annum)	Development Cost of 1997 + 10% escalation per annum to account for the development cost incurred (Rs. in lakhs/acre)	Revised lease rentals (6% return on land and 18% on development cost) (per sq. mtr./annum)
1.	Service & Residential	2.64	5.29	27.00	3.43	19.20
2.	Industrial	2.64	9.20	45.00	7.64	38.00
3.	Commercial	2.64	17.80	83.00	13.58	64.30

7.1. In the meanwhile, the (then) Ministry of Shipping on 8 March 2004 has issued a revised land policy for implementation by all major ports except Kolkata Port Trust and Mumbai Port Trust. In view of the new land policy issued by the (then) MOS, the TPT was requested to review and, if necessary, revise its proposal.

7.2. The TPT in response has stated that the revised computation furnished earlier is in accordance with the land policy issued by the (then) MOS and the same may be considered. It has agreed to adopt the reduced annual escalation from the existing 5% to 2% in the lease rentals prescribed by the (then) MOS in the new guidelines from current year onwards.

8.1. In this backdrop, the revised calculation furnished by TPT was examined and the TPT was requested to confirm that the actual development cost considered for computation of lease rentals are at depreciated value and not at original cost, to confirm that the revised proposal is in conformity with the policy guidelines issued by the (then) MOS, and to explain the reasons for seeking 18% return on the development cost when the new land policy does not mention anything in this regard apart from seeking other additional information.

8.2. The TPT has furnished its replies to our queries a summary of which is given below:

- (i). The revised lease rent calculation has been made considering 18% return on the development cost based on the Government Guidelines issued on 01.04.1995. This rate of return was adopted for revision of lease rent for the period 01.07.1997 to 30.06.2002 also and the same was approved by the TAMP. The same procedure is adopted for the current revision of lease rent.
- (ii). As regards the observation that return on the market value of the land and also on the development cost may tantamount to double counting, the TPT has clarified that development cost is considered only in case of Zone A. Moreover, a local authority has avenues to recover the development cost whereas Port can recover the development cost only be including the same as capital cost. The land value is what is prevalent around the port and this has to form the basis for computation of market value. The port has refrained the tendered upfront value as per which the valuation of land in port is very high. This of course would reflect true value of land considering the value addition by the port.

- (iii). The development cost has been considered at original cost. Lease rent is fixed by way of return on capital cost and hence matching the expenditure incurred (including depreciation) with reference to income is not applicable.
- (iv). The benefit accrued from the development cost is equally distributed among the various users in the absence of any other plausible alternative.
- (v). The lease rent for Zone B is proposed to be retained as per its original proposal.
- (vi). It has confirmed that the proposal for revision of lease rent is in conformity with MOS policy guidelines and in accordance with Land Use Plan.
- (vii). It has proposed incorporation of relevant conditionalities governing lease rentals in line with the Land Policy guidelines issued by the MOS.

9. 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.

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

- (i). This Authority has been fixing lease rents for Port Trusts lands following the extant Government guidelines on land and water front management of major ports. The proposal initially submitted by TPT was reportedly based on the Government guidelines issued in 1995, as amended from time to time. When the proposal was in process, the Government announced its revised land policy guidelines in March 2004. The TPT was accordingly advised to modify its initial proposal to reflect the revised policy guidelines of the Government. The revised proposal of the TPT is, therefore, taken up for consideration.
- (ii). The lease rentals for TPT lands were last fixed by this Authority in July 1997. The earlier guidelines of the Government requires revision of the base rate once in five years. The revised policy guidelines issued by the Government retains the same position. The TPT has accordingly sought approval to the revised rates retrospectively w.e.f. July 2002 i.e. on expiry of five years from the effective date of the implementation of the previously revised rates. In view of the clear Govt. guidelines in this regard, it is inevitable to consider revision of lease rents at TPT retrospectively from July 2002 even though this Authority does not ordinarily resort to retrospective fixation of rates.
- (iii). The earlier as well as the revised guidelines of the Government clearly lay down the procedure to be adopted for determining the market value of the port lands. The revised land policy guidelines specifically prescribe that market value of land can be determined taking into consideration 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, rate arrived at by the approved valuer and any other relevant factors. The TPT has reported that the market value of land has been determined based on the average market value of land obtained from the District Revenue authorities for land in the area adjacent to the Port. A duly formed Committee has considered such details and arrived at the market value of the port lands. In case of the lands in Zone A, the market value of the lands is fixed at Rs 2.64 lakhs per acre for all categories of lands. It is noteworthy that the average land value is largely influenced by the high value of lands at Koil Pillai Colony and Khader Meeran Colony. It is not clear how far lands situated in these two colonies would be relevant and comparable to the entire port estate in Zone 'A'. Further, it defies logic that the lands under service, industrial and

commercial categories will have a uniform market value. Nonetheless, the position reported by the TPT on market value of lands for both Zone 'A' and Zone 'B' is relied upon in this analysis since a Committee comprising representatives of the port trust, Ministry of Shipping and the District Revenue Authorities has certified such valuation. It will be advisable if TPT analyse the details and attempt to fix realistic market value of lands falling under different categories, at least during the next review of lease rentals.

The TPT had initially sought 12% return on the market value of lands which has subsequently been scaled down to 6% in line with the revised policy guidelines of the Government.

- (iv). Another important factor in the calculation of the lease rent is the development cost considered by the TPT. Of course, the TPT itself has conceded that development cost is relevant only to its lands in Zone 'A' and such a factor is not loaded at Zone B since no development work was carried out by TPT in that zone. There can be a view that the various development work carried out in a Zone or its vicinity will be one of the important factors leading to appreciation of land value. That being so, allowing return on market value of land and also considering the development cost in the computation of lease rent may tantamount to double counting. Though TPT has not countered this argument frontally, it has attempted to justify its stand by stating that the tender upfront value of the land will reflect the true value of land considering the value addition made by the Port. It is TPT's argument that since valuation of land has not been done on this basis, development cost should justifiably be considered separately while fixing lease rent.

The Government guidelines of 1995 were specific insofar as considering the cost of development of land while fixing lease rent. The revised guidelines of 2004 are not explicit about allowing or disallowing return of development cost. Significantly, the earlier guidelines and the revised guidelines do not prescribe any different approach for determination of market value of land. If at all, the revised guidelines are more comprehensive to include various factors other than the recorded transaction value of nearby lands for determining the market value of the port lands. That being so, the treatment given to the development cost as per the earlier guidelines can reasonably be presumed to continue under the revised guidelines also. The development costs were considered while fixing the lease rent at TPT in July 1997. It is, therefore, reasonable to consider this element in the current exercise also.

- (v). Flowing from the decision to consider the Development Cost while fixing lease rental are the two issues about the quantum of such cost and the return thereon to be allowed in the calculation of lease rent.

The TPT in its initial calculation had considered Development Cost at the 1997 level which was escalated @ 10% p.a. to derive the Development Cost in the year 2002. Since no basis was found to endorse this approach, the TPT was requested to furnish the actual development cost incurred by the port at different categories of land. The TPT furnished such details for different categories of lands in Zone 'A' at original value of such expenditure instead of the written down value as on the cut off date. The development cost being one time expenditure should be considered for allowing return on the basis of its depreciated historic cost. The argument of the TPT that traditional cost plus approach is not valid for fixing lease rentals cannot be accepted since the quantum of return on capital employed allowed by this Authority is fixed for written down value of capital base considered at historic cost. If the capital base is to be given a different treatment, the quantum of return to be allowed thereon will be different. It is noteworthy that the TPT has sought return of 18% on the development cost which is generally allowed only on the written down value of the capital assets.

- (vi). The actual Development Cost furnished by the TPT cannot be considered in toto for allowing return due to the following shortcomings / inconsistencies:
- Allocation of expenditure between various categories of lands is not clear. One of the items is found to be counted twice under two different categories of lands.
 - For reasons stated earlier, only depreciated value of development cost can be considered.
 - The details of such assets considered for allowing depreciation benefit and return at the time of the last general revision are not furnished.
 - The entire development cost cannot be loaded only to the lessees. The developments may benefit other port activities as well as the port to the extent of lands under its computation. It will, therefore, be reasonable to allocate development cost on pro-rata basis.

The TPT should consider these points at least while formulating its proposal for the next review of lease rentals.

- (vii). Since the TPT has not furnished the written down value of development cost, an attempt has been made to derive such cost by relying upon the original cost of development furnished by TPT. The depreciated value has been arrived at based on the year of completion of individual items of work as reported in the Administration Reports of the TPT for the year 1997-98 onwards assuming an average economic life of 25 years for such assets. Some of the works do not find a mention in the Administration Reports for the year 1997-98 onwards which means they might have been completed prior to 1997-98. In the absence of the exact year of completion, such works are presumed to have been completed in the year 1997-98 for the purpose of calculation of depreciation. Likewise, some work items are not completed even in the financial year 2002-03. However, such items are considered at original value for the purpose of this analysis. Further, a capital expenditure of Rs.11.92 lakhs is booked for the two years 1999-2000 and 2000-01 against the project 'upgradation of port electrical system' shown under commercial category. Neither any expenditure is booked in the subsequent years nor it is even shown as Work-in-Progress in the accounts. It is, therefore, assumed that the port does not propose to go ahead with this project and hence the development cost for this particular item is restricted to the extent of expenditure actually booked in the accounts till 2002-03. Based on the moderations made, the development cost for different categories of land in Zone 'A' considered for the purpose of this analysis is as follows:

(Rs. in lakhs per acre)

Sl.No.	Purpose	Development cost at original value (as given by the TPT)	Moderated Development cost after depreciation
1.	Service/Residential purpose	5.29	4.41
2.	Industrial	9.20	8.01
3.	Commercial	17.80	12.34

- (viii). For fixation of port tariff, the maximum permissible return on capital employed presently being allowed is 17.5%. This Authority engaged Crisil Advisory Services to study the issue of return on capital employed to suggest a reasonable return to be considered while fixing port tariff. Considering the recommendations of Crisil, in the revised guidelines adopted by this Authority,

it has been decided to allow a uniform return on capital employed at 15% for both port trusts and private terminals. These guidelines are in the advanced stage of finalisation in the Department of Shipping and are expected to be notified soon. Since the lease rentals to be fixed now will be valid till 2007, it may be appropriate to apply the revised rate of return on capital employed at 15% adopted by this Authority. Even if any argument is advanced to suggest that the revised guidelines of this Authority will have only prospective effect and cannot be applied now to reduce the return in this case, the various shortcomings pointed out in the Development Cost do warrant a reduction in the existing level of return on capital employed of 17.5%. It is, therefore, found appropriate to allow a return of 15% on the modified development cost and consider such a position while fixing the lease rentals under review.

- (ix). While adjusting the proposed lease rent rates based on the revised policy guidelines of the Government, the TPT has not revised the proposed rates for Zone 'B' lands. In fact, the proposal of the TPT is to introduce a new classification of land allotment in Zone 'B'. Accordingly, it has proposed different set of lease rents for port related activities and non-port related activities. In case of port related activities, the TPT has proposed to maintain lease rentals at the same level as those of Zone 'A' which, in fact, will benefit many of the lessors of Zone 'B'.

The lease rentals of the land allotted for non-port activities require moderation since the port had earlier considered 12% return on the market value of land instead of 6% prescribed by the revised policy guidelines of the Government. In its original proposal, TPT had considered 12% of market value of the land in Zone 'B' as the annual lease rental for non-port related commercial activities in Zone 'B'. 62% of such rate was prescribed for industrial purposes and 34% of the rates was considered for residential purposes. The same stepping down factors proposed by the TPT are applied while moderating lease rentals for different categories of lands in Zone 'B' allotted for non-port related activities with reference to the revised return of 6% prescribed in the revised policy guidelines of the Government.

- (x). Based on the analysis given above, the revised lease rentals will be as follows:

ZONE – A

Sl. No	Purpose	Existing lease rent applicable as on 30 June 2002 (Rs. per sq.mtr. per annum)	Market value of land (Rs. in lakhs per acre)	Moderated development cost. (Rs. in lakhs per acre)	Revised lease rentals (Rs. per sq. mtr. per annum)	% increase over the existing lease rent applicable as on 30 June 2002.
1	Service/ Residential	17.02	2.64	4.41	20.25	19%
2	Industrial	31.60	2.64	8.01	33.62	6%
3	Commercial	51.05	2.64	12.34	49.66	-3%

Average increase works out to

8%

In view of the position explained above, this Authority decides to re-fix the lease rentals at Zone 'A' by allowing a uniform increase of 8% over the prevailing lease rentals rate for such categories of land on 30 June 2002. Uniform increase in the lease rentals is found to be more appropriate in view of the gaps pointed out earlier in determining market value and development cost for individual categories of lands. Lease rentals for Zone 'B' land allotted for port related activities may be maintained at the same level as Zone 'A', as

proposed by TPT. The rates for lands in Zone 'B' allotted for non-port related activities is moderated as explained above in the foregoing paragraph. Accordingly, the revised lease rentals for Zone-B will be as follows:

Sl. No.	Purpose	Existing lease rent applicable as on 30 June 2002 (Rs. per sq. mtr. per annum)	Revised lease rentals (Rs. per sq. mtr./annum)	
			Port-related	Non-Port related
1	Service/ Residential	17.02	18.40	34.70
2	Industrial	31.60	34.15	63.25
3	Commercial	172.60	55.15	102.00

- (xi). As per the Government guidelines, the lease rents fixed is subject to an automatic annual escalation. In terms of 1995 guidelines, the annual escalation in lease rent is at 5% (compoundable). In the revised guidelines of 2004, the quantum of annual escalation is reduced to 2%. In view of this position, the annual escalation is prescribed at 5% p.a. (compounded) for the period 1.7.02 to 30.6.04 and thereafter @ 2% p.a.
- (xii). The Tuticorin Port Land Welfare Association (Zone B) has requested that the lease rentals prescribed for commercial purposes at Zone 'B' at the time of the 1997 revision should be reviewed and reduced in line with the approach proposed now by TPT on maintaining the same level of lease rentals of both Zone A and Zone B. This issue has already been considered by this Authority earlier and the similar pleadings made was rejected by this Authority vide its Order number TAMP/123/2000-TPT dated 14 February 2001. There is no case for taking up the 1997 revision again for further review. Even though the market value of land at Zone B is manifold higher than that of the Zone A lands, the TPT has proposed now to maintain the same lease rentals at both the Zones. In view of this concession extended by TPT the allottees of lands for Zone B for port related activities will definitely be benefited at least w.e.f. 1 July 2002.
- (xiii). The Southern Petrochemical and Industries Corporation Ltd (SPIC) has requested that the land allotted to it for Ammonia Importation Terminal (AIT) has been classified as 'commercial purpose' by the TPT as against its actual use as 'industrial purpose'. It has requested to re-classify its land as 'industrial purpose'. The TPT has clarified that there is a separate agreement between the TPT and the SPIC on lease of land and hence it is beyond the jurisdiction of this Authority. The issue about classification of land is not a tariff related issue and as rightly pointed out by the TPT it is beyond the TAMP jurisdiction and hence this Authority may not like to interfere in this matter.
- (xiv). The TPT has proposed to incorporate some of the relevant conditionalities governing the lease rentals. One of the conditionality pertains to allotment of land based on highest accepted tender of port. This is an administrative matter and not a tariff related matter. The TPT may follow the revised guidelines prescribed by the Govt. on the land policy.

The TPT has also proposed a conditionality about computing upfront premium in case of lease more than 10 years. The proposed conditionality is not found to be in line with the revised guideline of the (then) MOS. It will be sufficient if a condition is incorporated in the Scale of Rates stating that all terms and conditions governing the lease rent shall be as per the guidelines of the Government, instead of listing them down once again.

- (xv). As already explained, the revised rates approved by this Authority will come into effect retrospectively from 1 July 2002. In terms of the Government guidelines, validity of the rates fixed now will be for the period from 1.7.2002 to 30.6.2007.

As correctly mentioned by TPT in its proposal, the revised rates will be made applicable in case of the existing lessees / licensees and in those cases renewed / allotted after 1.7.2002 only if the respective lease agreement or letter of allotment, if no lease deed is still executed, explicitly provides for revision of lease rentals during the currency of the lease period.

Besides this, the Tamil Nadu Electricity Board (TNEB) has mentioned about a litigation pending in the High Court with reference to the lease rents fixed for its lands in 1997 and an interim Order passed by the High Court in that case. The applicability of revised lease rents in case of TNEB will be governed by the orders of the High Court.

11. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the revised lease rate for lease of lands belonging to the TPT as given below:

Lease rate for lease of land in port area belonging to the TPT from 1 July 2002

Sr. No.	Purpose	(Rate in Rs. per Sq. mtr. per annum)		
		Zone A	Zone B	
			Port related	Non-port related
1.	Service and Residential	18.40	18.40	34.70
2.	Industrial	34.15	34.15	63.25
3.	Commercial	55.15	55.15	102.00

Note:

- (i). The rates prescribed shall be applicable with effect from 1 July 2002 and will be reviewed after five years.
- (ii). The lease rent shall bear an escalation @ 5% (compoundable) per annum for the period 1 July 2003 to 30 June 2004. Thereafter, the rates shall be escalated by 2% per annum till such time the rate is revised with the approval of the competent authority.
- (iii). The other conditions governing the lease rental shall be as per the guidelines issued by the (then) Ministry of Shipping in March 2004, as may be amended from time to time.

(A.L. Bongirwar)
Chairman

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

F. No.TAMP/35/2003-TPT - Proposal from the Tuticorin Port Trust (TPT) for revision of lease rents of port lands.

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

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

Tuticorin Port Land Users Welfare Association (Zone B) (TPLUWA)

(i). The proposal to treat all the existing licenses in Zone B (except Sl. No.12, 13 and 14 in the list of licenses) as port related is appreciated and accepted.

(ii). The lease rent for lands in Zone 'B' allotted for commercial purpose is proposed at Rs.68/- per sq. mtr. per annum as against the existing lease rent applicable at Rs.142/- per sq. mtr. per annum (for the period 1 July 1997 to 30 June 2002). The existing lease rent is unjustifiable in comparison to the pre-revised rate of Rs.15/- per sq. mtr. per annum.

This issue was also raised earlier during a hearing in 2001 wherein the Association expressed its willingness to accept the same rate as applicable for lands allotted in Zone 'A' for commercial purpose i.e. Rs.42/- per sq. mtr. The Association had withdrawn the Writ Petition filed by it in this regard, however, this matter is still not resolved.

(iii). The commercial lease rent of Rs.142/- per sq. mtr. per annum for the period 1 July 1997 to 30 June 2002 should be reduced to a reasonable rate proportionate to Rs.68/- per sq. mtr. per annum proposed in the instant case.

(iv). The lease rent for port land in Zone 'B' is proposed to increase by 62% on an average from the lease rents applicable during the previous period. Since most of the tenants in Zone 'B' are doing small business in the seabed, it is unjustifiable to fix the lease rent on basis of market value of the land. Hence, the increase may be restricted to a minimum level of 10% to 15% only.

(v). All licensees in Zone 'B' may be categorised as land allotted for service purpose and the lease rent may be fixed at Rs.15/- per sq. mtr. per annum for the period 2002- 2007.

All India Chamber of Commerce and Industries (AICCI)

While appreciating the proposal about considering all licensees in Zone 'B' as port related activity, it has reiterated the suggestion made by the TPLUWA about reconsidering the commercial lease rent of Rs.142/- per sq. mtr. per annum for the period 1997-2002 and to fix it a reasonable rate proportionate to

the proposed rate of Rs.68/- per sq. mtr. by classifying all existing licenses as port-related.

Southern Petrochemical and Industries Corporation Ltd. (SPIC)

- (i). The lease rent of land allotted to it for Ammonia Importation Terminal (AIT) is calculated on the basis of rent prescribed for 'commercial purpose' against its actual use as 'industrial purpose'. Handling of Ammonia in AIT is classified as Industrial Establishment as per the Registration Certificate also.
- (ii). Storage of imported ammonia for captive use is not a commercial activity. The TAMP may examine the classification of land allotted for 'AIT' and re-classify as 'industrial purpose' instead of 'commercial purpose'.
- (iii). The increase proposed in the lease rentals to an extent of 62% apart from 5% compounded increase in lease rent is very high.

Tuticorin Custom House Agents' Association (TCHAA)

- (i). The port had not done any development on lands allotted to the users on long term basis. The respective users have developed the land and constructed either commercial offices or warehouses as per their requirement.
- (ii). The users started to shy away from Tuticorin port with the upward revision in lease rent to Rs.42/- per sq. mtr. per annum during the year 1997. It has quoted an example of the lease rent for a warehouse which is only Rs.4 per sq.ft. just outside port whereas, for a godown constructed on port land the rent of the land prescribed is at Rs.54.96 per sq.mtr. per annum.
- (iii). The port should in fact promote utilisation of their vast unutilised land by providing it to the cargo interest at reasonable rates.
- (iv). The rate offered at the time of initial allotment during 1994 was Rs.8/- per sq.mtr. per annum with annual escalation clause of 5%. This itself is sufficient for accounting the inflation and the rates so arrived at will also be in accordance with market rates.
- (v). If 5% annual escalation is considered on the lease rent of Rs.8/- per sq.mtr. per annum, effective from 1994, the present rate would have been Rs.12.41 per sq.mtr. per annum for the year 2003, as against the present rate of Rs.54.96 per sq.mtr. per annum. The TAMP may re-fix the rates at a reasonable rate considering 5% annual increase only.
- (vi). The port estate is an exclusive area specifically for port oriented activities whereas the land adjacent to the port could be used for multifarious commercial activities fetching enormous income. Hence, the port estate should not be compared with the land value in the adjacent area.

Tuticorin Chamber of Commerce and Industry (TCCI)

- (i). The present lease terms in respect of lands allotted for salt production contains a clause that the basic rent shall be revised at the end of every

- 5 years, in addition to the annual escalation of 10% per annum (compounded).
- (ii). Annual escalation of 10% will cover the increase in market value of the land. Hence, there is no necessity for a revision at the end of every 5 years. If rents are revised every 5 years, the lessee will shy to invest in the industry due to uncertainty in lease rents. This in turn will affect the traditional salt industry of Tuticorin.
 - (iii). The TAMP has revised the basic rent from Rs.100/- to Rs.2016/- per acre with effect from 1998 with an escalation of 10% per annum, which will certainly make salt producing unit uneconomic and unviable. The TAMP should fix the rent in consultation with the Salt Department and Kandla Port, so that there is uniformity in the lease rents for the land leased for salt production all over the country. There should not be any revision during the entire lease period; there should be an uniform rent for lands leased-out by Kandla Port Trust and Tuticorin Port.
 - (iv). The tri-fold classification as service/residential, industrial purpose and commercial purpose is basically a wrong approach. Valuation of land for the service/ residential purpose is done low to help the Port Trust employees contrary to the views expressed by the Tahsildar.
 - (v). Seeking the help of Tahsildar to fix the value of lands is abdication of duty. The State Government raises the guideline value by 15% every year; however, the market value of land is lower than the guideline value. In fact the guideline value is intended only for the purpose of stamp-duty collection.
 - (vi). The TAMP should combine both social and commercial needs as to arrive at its own value.
 - (vii). The Koil Pillai Colony Extension and Khader Meeran Colony Extension cannot be taken up as an index as it is outside the port core area and nearer to Camp I of Tuticorin Thermal Power Station.
 - (viii). There cannot be a two fold escalation as compoundable escalation at 5% per annum and escalation at 12% of the market value of the land. This will have a cascading effect.
 - (ix). There cannot be retrospective rent fixation; this can be done only by the Parliament and Legislature.
 - (x). The value of the property in Zone B in the eastern segment of the town is sharply going down after the communal riots. The Committee constituted to revise and re-fix the base of lease rent has no user representative except bureaucrats.
 - (xi). Whether the activities are port related or non-port related is a subjective concept. All activities are port related in the broad sense.
 - (xii). The lease rate for repairing yard for dry docking should be kept at reasonable level in order to encourage coastal trade.

- (xiii). There cannot be twin fold approach in fixing the value of land one on a tender basis and other on the basis of details furnished by the Revenue Department.

Tamil Nadu Electricity Board (TNEB)

- (i). The proposed revision in the lease rent is opposed since the present lease rent itself is unreasonably high.
- (ii). The lands were undeveloped at the time of initial allotment and all development work have been carried out by it.
- (iii). The present cost of the land as per Government guide line value is Rs.42, 200/- per acre only and the present market value of 475.56 acres of land works out to about Rs.2.0 crores only. But, so far, it has paid Rs.21.19 crores (as on 31 March 2003) to the TPT towards lease rent itself, which is 10.60 times the present cost of the land.
- (iv). The total lease rental for 475.56 acres of land works out to Rs.4.40 crores per annum at the proposed lease rent of Rs.23 per sq. mtr. per annum. This is 2.2 times the cost of the land itself. This is not at all reasonable and hence not acceptable.
- (v). Vast area of land has been taken on lease from the TPT. Such periodical increase in lease rent at the rate chargeable for other lessees who have taken small extent of land on lease is not justifiable.

3. The TPT vide its letter dated 23 January 2004 has responded on the comments of TPLUWA. Some of the main points made by the TPT are summarised below:

- (i). Zone-B lands have been classified as port related and non-port related based on the purpose for which land is allotted. As recommended by the Board of Trustees of the TPT, all the land users at Zone-B are classified as port related except the land allotted to M/s. HPCL for running a petrol bunk which is classified as non-port related. Even for port related activity three categories with different rates are proposed depending on the purpose for which land is allotted. It may not be possible to classify all the land users at Zone-B under single category of service purpose.
- (ii). The existing lease rent for the period 1997 to 2002 has increased in the range of 32% to 35% by applying 5% annual escalation to the base rates prescribed in the year 1997. The revision of lease rate is made based on the local market rate prevailing at the time of revision. The increase in the lease rent by 32 to 35% once in five years is found reasonable taking into consideration huge cost invested by port in development work and due to increase in land cost.
- (iii). Zone 'B' is within the Municipal limits and adjacent to main road which will have a high land value. The lease rate fixed by the port is reasonable and it may not be possible to reduce the rates.

4. A joint hearing in this case was held on 19 February 2004 at the TPT premises. At the joint hearing, the following submissions were made:

Tuticorin Port Trust (TPT)

- (i). Following the 5 year cycle prescribed, the revision is due in 2002. We have followed the procedure prescribed in the Govt guidelines.
- (ii). Our estate activity is in deficit. Estate should in fact generate surplus revenue so as to reduce burden on cargo and vessel related tariff.
- (iii). We maintained the existing classification. In Zone B, we want to introduce a categorization of 'port related purposes' and 'non port related purposes'.
- (iv). In Zone B, we have not considered full market value and excluded development cost. This is to give concessional rate at Zone B.
- (v). There is hardly any scope for new leases in Zone 'B'. So the existing classification to continue.
- (vi). The issue of classification of land for ammonia tank is settled in the agreement signed between SPIC and TPT. It would not come under TAMP's jurisdiction at this stage.

Tuticorin Custom House Agents' Association (TCHAA)

There is an automatic escalation clause of 5%. That should account for escalation in cost / value.

Tuticorin Port Land Users Welfare Association (TPLUWA)

- (i). Zone 'A' and Zone 'B' are not comparable. Zone 'B' services catamarans and traditional vessels and not deep sea ships.
- (ii). The land may be a developed one. But, port services in Zone 'B' is undeveloped. Earning potential is very limited.
- (iii). The rate fixed in 1997 is unreasonable. Reduce retrospectively from 1997 in case of Zone 'B'.

Tuticorin Steamer Agents' Association (TSAA)

- (i). The establishments in Zone B are essential services catering to the fishing harbour and sailing vessels. So, categorization should be made in right perspective. They cannot be classified as 'commercial purposes'.
- (ii). The port is situated at 15 Km from town. The offices, etc., allotted to users should be treated as a facility to promote trade and, therefore, charged at a concessional rate.

Tuticorin Thermal Power Station (TTPS)

- (i). The increase proposed is unreasonable.
- (ii). The calculation of development cost appears to be wrong.

- (iii). We have filed an appeal in the High Court against the 1997 rate revision. The Court has passed an interim Order. The final order is awaited.

Southern Petrochemical and Industries Corporation Limited (SPIC)

The area allotted to us for storage of ammonia is classified as commercial. It should be classified as Industrial.
