

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

TARIFF AUTHORITY FOR MAJOR PORTS

G. No. 181

New Delhi, 7 November, 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 closes the case relating the proposal of the Kandla Port Trust regarding revision of the rate structure for the land leased out for the purpose of salt manufacture at Kandla as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/98/2002-KPT

The Kandla Port Trust

Applicant

ORDER

(Passed on this 22nd day of October 2003)

This case relates to a proposal received from the Kandla Port Trust (KPT) regarding revision of the rate structure for the land leased out for the purpose of salt manufacture at Kandla.

2. It may be relevant here to recall that the KPT had earlier submitted a proposal in November 2000 for an upward revision of 100% of the existing rates for its lands leased out for the purpose of salt manufacture. This proposal was disposed of by this Authority vide its Order No. TAMP/120/2000 dated 9 August 2001 which was notified in the Gazette of India on 24 August 2001. In the said Order, this Authority made various observations on the approach adopted by the KPT to arrive at the proposed rate and decided not to accept the proposal of the KPT for upward increase in the leased rental for the salt land. One of the main considerations leading to this decision was the KPT's approach of putting on hold the matter relating to revision of land rentals in the Gandhidham Township area bearing in mind the unfortunate facts that the Kutch area was hit by cyclone, earthquake and drought in the previous four years. It was, therefore, felt that it would be more appropriate and equitable for the KPT to take up the case of salt lands for the revision of rentals only when the other land cases were found to be ready for re-consideration. The KPT was advised to take into account the various other points about the computation of escalation, etc whenever it decided to revive this proposal alongwith other land matters.

In this backdrop, the KPT has now come up with the proposal for consideration requesting this Authority to revive its proposal of November 2000 and review the Order dated 9 August 2001 passed thereon. The KPT has pointed out that the Ministry of Shipping vide its letter No. PT-17011/77/97-PT dated 5 July 2002 has accorded approval for renewal of lease of salt lands in favour of 26 lessees at the rate of leased rent revised by the Board of Trustees of the KPT vide its resolution of 20 October 2000. The Government has also advised the KPT to approach this Authority to review its Order passed on 9 August 2001 and approve its proposal regarding revision of the rate structure for lands leased out for the purpose of salt manufacture w.e.f. July 1999 on the ground that the Salt Pan Lands were not effected by the earthquake. Even though the rental of lease in respect of 26 salt lands has been approved by the Government, new lease agreements could reportedly not be executed for want of the approval of this Authority to the revised rates in respect of lease of salt lands. The KPT has also furnished statistical details about the salt production and salt export from Kandla to argue that the salt lands did not suffer in adverse impact due to the natural calamities which had hit the Kutch region during the last four years. Further, it has indicated that an expenditure of around Rs.30.42 crores had been incurred by it during the past five years in developing the road network which has enhanced the facilities and services available to the salt lands.

4. In accordance with the consultation procedure adopted, the proposal of the KPT was circulated to the concerned representative bodies of users for their comments. In their comments, the Gandhidham Chamber of Commerce and Industry and the Kutch Small Scale Salt Manufacturers Association have opposed to the proposal and requested for not effecting any upward revision for the leased rental.

5.1. A joint hearing in this case was held on 10 June 2003 at the KPT premises in Gandhidham. At the joint hearing, the Chairman of this Authority flagged the following points and advised the KPT to furnish additional information / clarifications on them:

- (i). The TAMP had earlier issued Orders in this regard on 9.8.2001. In the operative part (para 5) of the Order, various issues have been raised, but such issues are not addressed in the instant proposal. If the present proposal is to be considered, all the points as mentioned in para 5 will have to be replied. For example, in para 5(i), it has been mentioned that unless the old Lease Agreements provide for alterations in rates, it cannot be said to be valid in law.
- (ii). Although the TAMP is not directly concerned, the TAMP would like to know whether the Port would like to administer this land and whether there is any possibility that in future this land will be required either for Port use or for any Port-related use.
- (iii). In the proposal, there are five leases for which no recommendation on extension of lease tenure has been made, probably on the ground that they have not fulfilled the conditions regarding the Cyclone Shelters. The Port should either give us the latest status on the provision of Cyclone Shelters or tell us what step will be taken by the Port to provide the Cyclone Shelters. It is also to be clarified that whenever their lease is to be renewed, whether the rent is recoverable as per the prevailing rates with retrospective effect or not?
- (iv). (a). From the proposal it is not clear as to what is the actual investment made by the Port for acquiring these Salt Pan lands. It is understood that some of these lands were acquired through legal proceedings and some were transferred from the Government. Factual information may be given by the KPT.

(b). It is presumed that no further investment for improving any facilities inside this land was made by the KPT. This may be confirmed.
- (v). Presumably, there are Salt Pans belonging to the Government of India or the Govt. of Gujarat adjoining the lands mentioned in the proposal. What is the rate structure for these lands? How do they compare with the proposed rates of KPT, assuming the proposed rates are to be effective from July, 1999?
- (vi). During the joint hearing today, the Chairman, Kandla Port Trust gave some information about the existing lease holders. The information about validity of the leases mentioned in the statement may be verified and updated. It may be examined whether Lease Agreement provided for Revision of Lease Rent. The legal implications of revising rates in absence of specific clause may be brought out clearly. While giving this information, the areas involved, etc. should be given, and it should be clarified as to whether any revision of the lease rent has been made so far for these lands.
- (vii). The Sub-Committee headed by the Chairman, KPT has brought out that no sale transactions of the salt land have taken place. It is presumed that as per lease deed sale transactions were not permitted. If so, it may therefore, be clarified as to what type of transactions are being referred?

- (viii). (a). The basis on which the rates were revised in 1994 was not made available. The basis for proposing the new rates in 1999 may be explained.
- (b). Prior to 1994, the rates were reportedly fixed in 1974. This may be confirmed and the rates which were prevailing in 1974 and then revised in 1994 may be provided.
- (ix). The condition laid down under Para 1(C) of the letter No.PT-17011/77/97-PT dated the 5th July, 2002 issued by the Ministry of Shipping, specifies as follows:

“Above 100 acres of salt land @ Rs.130/- per acre per annum with an escalation @5%(compoundable) for the period from 1.8.2000 to 31.3.2004 subject to condition that KPT will again approach TAMP to review their order passed on the 9th day of August, 2001 in case No.TAMP/120/2000-KPT and to approve KPT’s proposal regarding revision of the rate structure for its land leased out for the purpose of salt manufacture effective from July, 1999 on the ground that Salt Pan Lands were not affected by the earthquake, after taking an undertaking from all 26 lessees that they agree to pay these revised rates or the rates to be fixed by TAMP for the salt pan land w.e.f. July, 1999.”

The conditions prescribed in the Shipping’s Ministry’s letter may be complied.

It should also be confirmed that during the earthquake there was no damage to any of the structures in the Salt Pan Land and the Lease Holders did not suffer any loss.

5.2. The KPT wanted time to reply to the queries raised by the TAMP and issues raised by the concerned users. The KPT agreed to hold further discussions with the concerned users and submit a revised proposal or proposal for adhoc rates, if necessary, by 31 July 2003.

5.3. On 29 July 2003, the KPT requested extension of time for finalising its revised proposal. The request was allowed and further time upto 30 September 2003 was granted. Again, on 29 September 2003, the KPT informed that the matter is under active consideration of a Sub-committee constituted by it and it will take some more time for finalisation of the revised proposal.

6. This case is pending before this Authority for more than 9 months now. Further, the KPT has agreed to revise its original proposal after comprehensively examining the various issues raised by this Authority and the users. In this backdrop, it serves no purpose to keep the original proposal of the KPT, which is registered as a tariff case, open indefinitely when the port itself wants to revise the initial proposal. This case is, therefore, closed as withdrawn. When the KPT comes up with a revised proposal, it will be taken up for consideration following the usual consultation process. The KPT is advised to formulate its revised proposal based on the observations made by this Authority in its Order dated 9 August 2001 and the issues flagged by the Chairman (TAMP) at the joint hearing held on 10 June 2003.

(A.L. Bongirwar)
Chairman