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TARIFF AUTHORITY FOR MAJOR PORTS

G. No. 179

New Delhi 5 September 2002

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 for revision of lease rent for the land leased out to M/s. Tuticorin Salt & Marine Chemicals Limited for production of salt as in the Order appended hereto.

(S. Sathyam)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/34/2001 - TPT

The Tuticorin Port Trust

- - - -

Applicant

ORDER

(Passed on this 27th day of August 2002)

This case relates to a proposal received from the Tuticorin Port Trust (TPT) for revision of lease rate for the land leased out to M/s. Tuticorin Salt & Marine Chemicals Limited (TSMC) for production of salt.

2.1. The TPT has made the following points in its proposal:

- (i). At the time of merger of the Tuticorin Minor Port with the Tuticorin Major Port on 1 April 1979, a portion of land to an extent of 262.80 acres was transferred to the Tuticorin Major Port by the erstwhile Minor Port.
- (ii). This land was initially leased out during the year 1943 by the erstwhile Minor Port to Sh. M.R. Mannar Iyer for a period of 25 years to manufacture refined salt. In between the lease term, in the year 1946, the lease was transferred in the name of the TSMC and on expiry of the lease in the year 1968, the land was again leased out to the TSMC for a further period of 25 years.

Subsequently, the same land was allotted to the TSMC afresh, for a further period of 20 years w.e.f. 8 July 1993 @ Rs.100/- per acre per annum (subject to certain terms and conditions), with the approval of the (then) Ministry of Surface Transport (MOST).
- (iii). One of the conditions of the lease agreements entitles the TPT to revise the base lease rent every five years; and hence, the rate of Rs.100/- per acre per annum became due for revision on 8 July 1998.
- (iv). In accordance with the policy guidelines for Land & water front management issued by the Government, the TPT constituted a Committee under the Chairmanship of the Chairman (TPT) with representatives from the (then) MOST, State Revenue Department and Officers of the TPT, for fixing the revised lease rate to be effective from 8 July 1998 onwards. The Committee decided to obtain a guideline value of salt lands in and around Tuticorin before fixing the revised lease rate of the port land allotted to the TSMC. The task was assigned to the District Revenue Officer, one of the committee members, who furnished the present market rate (as on 7 December 2000) of the land in question as Rs.42,000/- per acre (maximum).
- (v). The principle to fix lease rent for any land is that the lease rent must be arrived at by calculating annual return @12% on the market value of land and @18% on the development cost. Since, in this case the TPT had not made any investment for development of the land, only 12% annual return on the market value of the land is applicable. Accordingly, annual lease rent for the salt lands allotted to the TSMC works out to Rs.5040/- per acre per annum (i.e., 12% of Rs.42,000/-) with effect from 8 July 1998.
- (vi). The Audit had earlier objected to the lease rate of Rs.100/- per acre per annum fixed during 1993, being very low; and, the same was also included in the C & AG Report. The rate was compared with an open tender rate of Rs.10,500/- obtained by the Salt Department at Tuticorin during the year 1995-96. The port has at that time, informed the auditors that at the time of next revision, the lease rate obtained by the Salt Department would also be taken into consideration while fixing the lease rate for the land in question.

It was also mentioned in the C & AG Report that the TPT had leased 3.4 acres of land for manufacture of salt at a lease rate of Rs.6000/- per annum (Rs.1765/- per acre per annum) based on a competitive bidding (This land is adjacent to the Tuticorin Municipal limits). There was no response for this land when re-tender was invited, as the party who quoted Rs.6000/- had left the land after one year.

- (vii). If compared with the lease rates for lands allotted for salt production by the KPT, Salt Department, (Government of India), Tuticorin Ports' scheduled lease rates for allotment of land for different purposes and the lease rates calculated from the market value of land allotted to TSMC for Salt production, the rate of Rs. 5,040 per acre per annum seems reasonable. It is not feasible to compare this rate with the TPT's scheduled lease rates since these scheduled lease rates are applicable for the developed lands classified according to the purpose for which they are allotted; whereas, the land allotted to the TSMC was originally low and swampy, developed by the TSMC only for the purpose of production of salt, a low value commodity.

2.2. Although the minutes of the Committee meeting held on 16 February 2000 at the TPT indicate that the committee was to meet again for approval of the rate, no such meeting appears to have taken place. Upon enquiry, the port stated that, on receipt of the market value from the committee member, the revised lease rent was worked out adopting the opportunity cost with the concurrence of the Finance wing of the port; and, the cost so worked out was sent to the TAMP for approval, without convening the committee meeting again.

2.3. The TPT has indicated that this proposal was not placed before its Board of Trustees for consideration; and, this Authority has been approached directly for approval of the proposal.

3. In accordance with the procedure prescribed, a copy of the proposal was forwarded to the TSMC and various concerned representative bodies of port users for comments. The comments received from them are summarised below:

Tuticorin Chamber of Commerce and Industry (TCCI)

- (i). The renewal of the land to the TSMC has been largely looked into from the political point of view rather than the economics of it from the lesser-lessee point of view.
- (ii). Utilisation of land for manufacture of salt cannot be compared with any other purpose as the social cost of salt production is more important than any other purpose.
- (iii). The land in question was already decided for renewal (25 years back by) the Madras High Court Division Bench in 1974. The renewal should be automatic; and, the rental element can be increased without hurting the port interest as well as the interest of the salt producer.
- (iv). Since, large number of Harijans are employed in the TSMC, the interest of the weaker section has to be looked into. A sum of Rs.5040/- is very high and the rent per acre at Rs.2000/- to Rs.2500/- shall be ideal without either side loosing in the long run.
- (v). A small area comprising of 3.4 acres of land leased out at Rs.1765/- per annum per acre is not a correct index to evaluate the large tract of land admeasuring about 262.80 acres.
- (vi). Long term perspective planning is required rather than emotional, political, sociological and the short term return considerations since in the years to come, salt will become a scarce commodity similar to drinking water. The views of the Salt Department may also be taken into consideration.
- (vii). The District Revenue Officer can fix the price of the land but not the leasing of the salt land, as he does not have the required expertise to decide things; and, shall look it from the revenue point of view.

M/s. Tuticorin Salt and Marine Chemicals Limited (TSMC)

- (i). The lease rent of Rs.100/- per acre per annum subject to an escalation @ 10% per annum (compoundable) was fixed by the MOST after detailed deliberations and consultation with the Salt Department and the Kandla Port Trust (KPT). The present lease rent of Rs.177.15 per acre per annum paid by us is much higher than the lease rent paid by the lessees of the Salt Department and the KPT for salt manufacture.

- (ii). The DRO had brought to the notice of committee members that-
- the lease rate fixed for salt lands of State Government is only 5/- per acre per annum and royalty at Rs.2/- per metric tonne of salt produced per acre (minimum 50 tonnes) is fixed at Rs.100/- per annum totalling to Rs.105/- per acre per annum; and,
 - a proposal to reduce the tax payable to Panchayat / Panchayat Unions, fixed at Rs.630/- per acre per annum, is under consideration of the State Government.

The State Government has leased 5000 acres of land to Tamilnadu Salt Corporation at Rs.135/- per acre per annum. It is clear that the highest lease rent is being paid by us if compared to all other lessees of the State Government and the Central Government for salt manufacture.

- (iii). According to clause (c) of the Lease Agreement, lease rent shall be subject to an escalation @ 10% per annum (compoundable) which actually overrides the option given to the TPT under clause (f) of the Agreement to revise the base of lease rent every five years as the escalation of 10% per annum covers the escalation of the market value for the land annually from the date of entering of the Lease Agreement.
- (iv). The C & AG has objected to the lease rate of Rs.100/- per acre per annum for the land allotted to the TSMC, comparing it with an open tender rate of Rs.10,500/- obtained in 1995-96 in a stray case by the Salt Department. It is understood that the lessee has closed down the business being uneconomical due to the exorbitant lease rent.

In another case where the rent was fixed @ Rs.1765 per acre per annum for 3.4 acres of land, the subject land was abandoned after a period of one year. The C & AG should consider only the rates fixed for salt manufacture by the major ports like the KPT for comparison.

- (v). A rate of return of 12% on the current market value of the land cannot be applied on this particular land leased out for manufacture of salt, which is a low value commodity. The rent at 12% is applied only for commercial undertakings and 9% for residence under the Rent Control Act.
- (vi). Neither the Government of India nor the State Government nor the KPT has adopted the method of fixing rent at 12% per annum on the market value of the land. It is, therefore, only just and fair that the TPT shall also follow the same principle.
- (vii). The prevailing lease rate of Rs.52/- per acre per annum of the Salt Department and Rs.65/- per acre per annum of the KPT are pointers that must desist the TPT in asking for an increase as it had already fixed a sum of Rs.100/- per acre per annum. The Salt Department of the Central Government, being the controlling authority on salt production, the rates fixed by the Salt Department shall act as a guide to be followed by the other Government Agencies.
- (viii). A major portion of the lands leased was originally marshy, swampy, and the rest was 'sand dunes'. A huge sum has been invested for reclaiming the water logged marshy swampy area to make it fit for laying the salt works. The port has not spent anything on these lands like basic infrastructure facilities for starting the salt industry. A portion of land admeasuring 37.5 acres out of the original leasehold of 300.30 acres has already been relinquished for the purpose of laying railway track and road right across the salt works, which has also caused difficulties.
- (ix). The basic purpose of allotment of lease of land for manufacture of salt cannot be overlooked; and, the capacity of the salt industry to afford and withstand the escalations proposed must be examined while making any revisions in the lease rate.

Taking into account the average annual yield of salt per acre as assessed by the State Government, the present proposal to increase the lease rent (to Rs.5040/- per acre per annum), works out to Rs.84/- PMT.

The present cost of production of salt at Rs.200/- PMT will increase to Rs.284/- PMT with the proposed increase in the lease rent as against the average selling price of salt in Tuticorin areas which is around Rs.250/- to Rs.300/- PMT. Therefore, heavy financial losses leading to closure of the business will be there, if the lease rent is increased to Rs.5040/- per acre per annum.

It may also be taken into consideration that the salt industry is undergoing recession for the past couple of years; which is reflected by the fact that there has not been any increase in prices of salt during the past two years. In fact there has been no wage increase in the Tuticorin area during the years 1999 and 2000 because of the poor realisation.

- (x). The salt industry, being a traditional industry in Tuticorin, is directly giving employment to more than 300 direct and more than 500 indirect labours. The proposed increase of lease rent by the TPT will make the salt works unviable, the consequences of which would be unimaginable like labourers being thrown out of work.

Huge sums of monies have been borrowed as loan from a Nationalised Bank for development of the salt works and upgradation of salt to produce high quality iodised salt prescribed under the NIDDCP programme. If the current proposal of the TPT is implemented, the company will face serious financial problems in repayment of loans etc.

- (xi). Salt has been exported by us since the inception of the Tuticorin Harbour; thus, salt industry plays an important part in the export activity of the Harbour.
- (xii). In view of the above facts, the proposal for an upward revision of the lease rent of salt lands may be dropped.

4. The Indian Salt Manufacturers' Association (ISMA) has submitted a representation against the increase in the lease rent for the land allotted to the TSMC for salt manufacture by the TPT, supporting the arguments of the TSMC. The ISMA has also mentioned that its representation is filed on behalf of Salt Manufacturers & Merchants Association, (Tuticorin) and all the Salt Manufacturers' Association/ Federations' of India & Gujarat. It has made the following points in its representation:

- (i). An increase of thirty fold for the land leased out for salt manufacture (from Rs.177/- per acre to Rs.5040 per acre) is unjustified, unwarranted and will adversely affect the TSMC interest.
- (ii). A comparative analysis of the rates of the lease rent applicable in the other states is required because the total levy per acre for the lands leased out by the TPT is one of the highest in the Country.
- (iii). The Government of Gujrat has reduced the rate of ground rent from Rs.120/- per acre to Rs.60/- per acre and the ISMA is following up with the Gujrat State to reduce it further to enable the Gujrat Salt Manufacturers to compete with other states.
- (iv). The Salt manufacturers holding Port trust and State Government lands on lease are penalised in terms of higher lease rent for no fault of theirs.
- (v). The higher rate of the lease does not apply to the salt works in the 'co-operative sector', and those salt works, whose area is less than 10 acres. The Government must seriously reconsider as to why the burden falls only on those holding lands more than 10 acres.
- (vi). Since the industry is passing through an extremely difficult period of recession, the proposal of the TPT may be ignored.

5. Shri. N. Karunakaran, Proprietor, M/s. Rajaram Agencies, Former President, AICCI and former Trustee of the TPT, has also submitted a representation relating to the proposal of the TPT. In his representation, he has made the following requests:

- (i) The 262 acres of the port land in question should be treated as a developed land and, lease rent collected accordingly; and

- (ii) the issue must be examined from 8 July 1993 onwards as the lease rent fixed by the TPT @ Rs.100/- per acre per annum was not approved by the MOST.

6.1. A copy each of the comments received from the TCCI, TSMC, ISMA and Shri. N. Karunakaran was sent to the TPT as feedback information.

6.2. The TPT has responded on the comments of the above users. It has made the following points:

On the comments of the TSMC

- (i). Even though the lease rent was fixed at Rs.100/- per acre per annum, subject to an escalation @ 10% per annum (compoundable) with the approval of the MOST, the TSMC is paying Rs.214.35 per acre per annum as on date with escalation.
- (ii). The contention of the TSMC that the escalation clause overrides the revision clause of base lease rent by the port is not correct because the escalation clause is applicable only upto the period of the next revision and if the revised rent per annum is more than the lease rent being paid by the lessee at the time of revision, the revised lease rent has to be paid by the lessee and vice versa.
- (iii). The manner in which the other states or central government fixes the lease rent was not considered and the rent was fixed taking into account return @ 12% on the basic cost of the land and @ 18% on the development charges. On this basis only, the existing lease rent of the port lands has been worked out and approved by the TAMP also.
- (iv). Treating this land always as a salt pan is not appropriate as the land was handed over to the TPT by the State government for utilisation in port-related activity. It must be appreciated that the port is neither an agency to encourage salt cultivation nor an organisation in the business of salt cultivation.
- (v). The rates fixed by the Government of Tamilnadu, as indicated, are not relevant to the port land.
- (vi). While calculating the lease rent, no development charges have been accounted for as the land initially allotted to the TSMC was marshy and without any development like roads, water supply, electricity being carried out by the Port. The TSMC has not done any development except developing it as a Salt Pan. The purpose of revision of the base lease rent every five years was only to monitor the lease rent with the appreciation of the land value in the market.
- (vii). The average selling price of salt has no relevance as fixation of lease rent is based on the market value of the land under consideration and not on the cost of the salt in the market. The port would have allotted this land to some other port-related activity, if the land is not used as a salt pan.

On the comments of the TCCI

- (i). The TCCI has dealt with the cases wherein the salt pans have been acquired by M/s. SPIC, TAC, HWP, Thermal Plant, TPT, etc. for purposes other than salt production. The lands were acquired with due justifications for development of industries; therefore, the argument advanced by the TCCI in general bears no relevance with the revision of lease rent.

On the comments of the ISMA

- (i). The TPT has reiterated the points made by it earlier with reference to the basis of fixation of lease rent; and, comparison of the rates with the State Government.

On the comments of Sh. N. Karunakaran

- (i). The comments made are general in nature and mainly deals with the rate of Rs. 100/- per annum fixed during 1993, and are not relevant since the present subject is regarding revision of lease rates w.e.f. 8 July 1998.
- (ii). The small area of land admeasuring about 3 acres of land is a developed piece of land which is allotted to the Department of Commerce & Industry under the Government of Tamilnadu for establishing a Laboratory. A lease rate of Rs. 8/- per sq. meter per annum, initially fixed in 1992 till July 1997 was being charged by the TPT, which was subsequently increased to Rs. 14/- per sq. meter per annum (with 5% compoundable escalation) as applicable for allotment of land for service purpose.

7.1. A joint hearing in this case was held on 16 July 2001 in Tuticorin. At the joint hearing the following submissions were made:

Tuticorin Port Trust (TPT)

- (i). We have given a detailed proposal; today we are giving a written reply to The TAMP's queries (raised vide its letter dated 6 July 2001).
- (ii). We have not developed these lands, so, no development cost has been reckoned with. Only a 12% return on the value reported by the DRO has been considered.
- (iii). The special committee did not meet a second time. We have calculated with reference to the value reported by the DRO.
- (iv).
 - (a). The Land in question is a valuable land comprising of large area but, no tender was issued and it was given at a cheap rate of Rs. 100 per acre.
 - (b). We have proposed Rs. 5040/- per acre per annum.
 - (c). We are not sure whether such lands, so close to the port, should be given to salt manufacture at all. We may need it for port-related activities. Nevertheless, it is there for 20 years from 1993.
- (v). There has been some development work done by us on the lands surrounding this area; therefore, higher rate is charged there. If we go by that, these lands should be charged Rs. 42/- per square meter per annum. The location and purpose of use has to be taken into account as per the schedule notified earlier by the TAMP.
- (vi). We do not agree that leases (even if given by the old minor port) are to be automatically renewed; that is not the Government Policy.
- (vii). If they have spent money on development of land, they have also had 50 years time to recover their costs.
- (viii). This salt land, unlike elsewhere, is situated right inside the port area; therefore, salt manufacture cannot be a high priority activity there.
- (ix). TPT has to increase its traffic; it is not a salt corporation. Its objective cannot be to increase salt production at any cost.
- (x). Salt exports has been steadily going up; it is not correct to say that they are declining.
- (xi). As a special concession, wharfage for salt is kept at Rs. 5/-.

Tuticorin Salt & Marine Chemicals Ltd (TSMC)

- (i). We have had this land on lease from 1943 for 25 years; renewed for a further period of 25 years; and, (now) for another 20 years.

- (ii). The land to an extent of 360 acres initially received from the minor port; and, after merger of the minor port with the new TPT, from the TPT, was a marshy land and sand dunes. We have spent a lot of money to develop these lands.
- (iii). Lease rent with 10% annual escalation compounded annually with revision of base rate every five years is a double burden.
- (iv). Ours is a labour intensive industry; our sale price is fixed; and, there is a severe competition. Our costs are the highest in all ports. Please see the comparative statement given by us.
- (v). If the guidelines of the government are uniformly applied, we will be happy. If what is done for salt lands in the KPT is done at the TPT we will have no objection.
- (vi). (a). Compare our case with only salt industry; please do not compare us with other commercial activities.
(b). The Ramnad Dist. Salt Corporation is giving lands at Rs. 130/- per acre.
- (vii). This increase in lease rent to Rs. 5000/- will push up our cost by about Rs. 100/- PMT.

All India Chamber of Commerce & Industry (AICCI)

- (i). We agree that rates cannot be static. But such revision must be reasonable. It cannot be so much that the salt industry cannot bear.

Indian Chamber of Commerce & Industry (ICCI)

- (i). We agree that rates have to be revised; but, a revision to Rs. 5000/- is exorbitant.
- (ii). The KPT gives special consideration to salt manufacture; how can it be different at the TPT. Salt manufacture is a traditional industry here.
- (iii). The DRO has given the rate in 2000 how can it be applied from 1998; recalculate with reference to the rate prevailing in 1998.

Tuticorin Chamber of Commerce & Industry (TCCI)

- (i). The salt manufacture requires swampy area. It cannot, therefore be compared with other industrial or commercial activities.
- (ii). There will be severe competition as with improvement of railways, Gujarat Salt will come right into Tuticorin.
- (iii). The TPT has taken over all the liabilities of the old minor port. The facilities given by the old port to salt manufacture have, therefore to be protected. Lease has to be automatically renewed.
- (iv). The Rates cannot be static; they have to increase but, not at a rate which the industry cannot bear.

7.2. At the joint hearing written submissions were made by the TPT and the TSMC. The points made by them are summarised below:

Tuticorin Salt & Marine Chemicals Ltd. (TSMC)

- (i). In addition to submitting a comparative statement of the lease rent collected by various States and Central Government for salt manufacture for reference and consideration, it has clarified that presently an amount of Rs. 214/- per acre (and not Rs. 177/- per acre, as stated earlier) is being paid to the TPT as lease rent.

Tuticorin Port Trust (TPT)

In response to the queries raised by this Authority, the TPT has submitted its reply. In addition to submitting a copy of the relevant lease agreement, the following points have been made by it:

- (i). The land allotted in reference to the TSMC for salt production was not taken up for classification at the time of general revision of tariffs of the port in 1987, 1992 and 1997, since the categorisation proposed was only for lands allotted for service/residential, Industrial and commercial purpose. Besides, while the general revision was effected in July 1997, the land allotted to the TSMC became due for revision only in 1998 i.e. five year after the date of allotment in July 1993.
- (ii). As per the record note of discussion of the committee constituted for revision of lease rent for the lands allotted to the TSMC on 16 February 2000, the committee was to meet again; however, it did not happen as it was not found necessary. On receipt of the market value from the DRO for that land, the revised rent was worked out adopting the opportunity cost in concurrence with the Finance Wing of the Port, and sent to the TAMP for approval.

8. In pursuance of a copy of the letter sent by the Indian Salt Manufacturers Association (ISMA) to the Office of Deputy Salt Commissioner (DSC), Chennai, the DSC has sent a letter expressing his concern over the exorbitant increase in the lease rate for the salt land allotted to the TSMC. He has reiterated the points made by the ISMA with respect to the cost of production of the salt; and, the repercussions, the increase in the lease rate will have on the salt market.

Various components of cost involved in the cost of manufacture of salt; and, the methods adopted by the GOI to boost up the production in quantitative as well as qualitative terms are also emphasised.

He has requested to re-fix the rate of lease rent for the land allotted to the TSMC at par with the rate charged by the Government of Tamilnadu or at least to retain and continue the existing rate of Rs.177/- per acre per annum to avoid any hardship to the lessee and to enable them to compete in the open market.

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

- (i). This is a case for revision of lease rent relating to a plot of land of the TPT leased out to the TSMC. The TPT proposal has been formulated strictly according to the guidelines issued by the Government. As required by the guidelines a comprehensive committee including a representative of the District Revenue Authority was constituted. Taking into account the present market value of the land, the Port has proposed to fix a lease rent of Rs.5040/- per acre per annum.

Till formulation of its own guidelines governing land lease rents, this Authority has decided to continue with the present method being followed by the Port Trusts based on the guidelines issued by the Government in this regard. It is relevant here to mention that in many earlier cases relating to lease of Port Trust lands, this Authority has held that the Port Trusts should commercially exploit the lands/estate available with them to the fullest extent so that it can reduce the burden on tariffs.

- (ii). One of the main arguments put forth by the Lessee and some other user organisations is that salt being a low value commodity, a salt manufacturer cannot afford to bear the burden of lease rental at the proposed level. As has been correctly pointed out by the TPT, the Government has not given the lands to the TPT for the purpose of utilising them as salt pans. They are expected to be used for port-related activities. As far as the TPT is concerned, it has pointed out that a concessional wharfage of Rs.5/- PMT is being levied on salt export passing through the Port.

The TPT does not get any grant from the Government. It has to be financially self-reliant. That being so, it will be unreasonable to expect a Port Trust to forego its reasonable revenue to make somebody else's business viable. It is not within the charter of a Port to

promote salt industry particularly with reference to an individual salt manufacturer. The issue of whether the salt industry requires any protection is for the concerned Government to consider and provide financial reliefs, if necessary.

- (iii). The Lessee and some other users organisations have attempted to compare the prevailing rates for salt lands of the KPT and State Governments with the rate proposed by the TPT. Prima facie, such a comparison does not appear appropriate since land value across the country cannot be uniform. The reference to the KPT land is also not relevant since the KPT has a vast estate and the salt lands thereat lie in a marshy area without any other possible alternate use. The salt lands in reference at the TPT are in the middle of a buzzing Port and industrial township.
- (iv). The lease in reference is governed by a specific lease Agreement signed between the Port and the Lessee. The lease Agreement provides for an annual escalation in the lease rentals @ 10% per annum compoundable. It further allows an option to the TPT to revise the base lease rent every 5 years. Since the TSMC has signed the lease Agreement, it is not unreasonable to conclude that it was well aware of these conditions stipulated in the Agreement. Except objecting that the annual escalation clause overrides the option available to the Port Trust to effect a quinquennial revision of the base rate, the Lessee has not raised any dispute about the enforceability of the lease Agreement. As has been pointed out by the TPT, the contention of the Lessee about the annual escalation clause and the quinquennial revision clause in the lease Agreement does not hold water. The annual escalation clause is for escalating the lease rent during the quinquennium; the other clause is for effecting change in the base rent itself after every five years. If the interpretation of the Lessee is admitted, it can also be argued that such a contradictory clauses should not have been included in the lease agreement and as the affected party the Lessee should have objected to it at the time of signing the Agreement itself.

The TPT has chosen to exercise the option available to it in terms of the lease Agreement to revise the base rent after expiry of 5 years from the effective date of the lease Agreement. Having signed the Agreement with such a clause, it is not tenable for the Lessee to expect that the Lessor will not exercise the option.

Any specific lease Agreement will prevail over the general guidelines/revision of rates decided subsequently so long as they are not contradictory to the overall tariff setting principles adopted by this Authority. In the instance case, there is a specific lease Agreement which provides for revision of base rent every 5 years; and, for such a revision the Port Trust has adopted the methodology prescribed in the Government guidelines. That being so, there is no case for 'dropping' the proposal of the Port Trust on this count, as requested by the Lessee.

- (v). Since the lease was granted on 8 July 1993, the first quinquennial revision falls due on 8 July 1998; the Port has proposed for such a retrospective revision. For arriving at the proposed rate, the TPT has considered the market value of salt lands furnished by the District Revenue Officer in December 2000. The ICCI has pointed out the anomaly of fixing lease rentals for the year 1998 with reference to a market value obtained in the year 2000. The TPT has subsequently informed that it had made all possible attempts to obtain the market value for the salt lands for the year 1998 from the District Revenue Authorities; but, even after a lapse of nearly one year, such an information has not been forthcoming. The Port has requested to approve the market value adopted by it since, in its opinion, there may not be any significant difference in market value between the years 1998 and 2000.

While the objection of the ICCI deserves to be admitted, the argument of the Port to consider the same market value obtained in the year 2000 for the year 1998 does not appear logical. It will ordinarily be reasonable to assume that land value always appreciates. If reliable figures from the District Revenue Authority are not available, it is reasonable to discount the market value available for the year 2000 to arrive at an estimated market value for the year 1998. Recognising the fact that land value ordinarily only appreciates, the TPT has also included the annual escalation factor of 10% in the lease rentals. It will be logical to borrow the same escalation factor applied in the lease rentals to de-escalate the market value. Since the market value reported for the year 2000 is

Rs.42,000/- per acre, the market value for the year 1998 can be deduced by allowing a discount of 20% over that. Accordingly, the market value of salt land for the purpose of this analysis is taken as Rs.33,600/- per acre.

- (vi). Another important factor influencing lease rent is the annual return on the market value of land. The TPT has sought an annual return of 12%. It is noteworthy that the Government guidelines do not prescribe any formula for fixation of lease rent. There is no uniformity in this respect across the Major Ports and even some of the State Governments. The Government of Kerala is reported to consider 10% of the land value as the lease rent. The Visakhapatnam Port Trust has proposed to consider 6% of the land value as lease rent while the Cochin Port Trust in a case relating to fixing of lease rent of land at Puthuvypu adopted a figure of 3.33% of the land value.

In the case of fixing port tariffs at the Major Ports, a return on capital employed is allowed considering interest on capital (equivalent to the lending rate at which the Government loans are available to the Port Trusts) and 3% contribution to each of the two mandatory reserves for development and renewal to be maintained. It currently adds up 18.5%. For the year 1998, it was around 18% only. In the case of salt land, since the requirement of development and renewal are not relevant, if the same analogy of ROCE is applied, the maximum permissible return at best can be 12%. In the case of capital employed, the assets are taken at historical cost; whereas in the case of land in reference the asset value has been updated with reference to market value. Expecting the same rate of return on the asset base considered at historical value and current cost cannot, possibly, be viewed as reasonable.

As has already been pointed out, there is no uniform method available in this regard. At the same time, the rate of return of 12% sought by the TPT cannot be allowed without moderation. In the absence of any guideline in this regard available on record (and, developing such a guideline at this stage will involve a detailed Study which will unnecessarily delay the case under adjudication), it will be reasonable to adopt the maximum return already proposed by one of the major port trusts i.e. Visakhapatnam Port Trust. That being so, for the purpose of this analysis the return on market value of land is limited to 6%.

- (vii). Subject to the analysis given above, the modified lease rent will be Rs.2016/- per acre per annum. As has already been mentioned, as provided in the lease Agreement, this revised rate will come into effect retrospectively from 8 July 1998. Incidentally, the revised annual lease rent approved fits well in the range of Rs.2000-2500 per acre suggested by the TCCI.
- (viii). The Port users elsewhere have also voiced their concern over the approach of effecting quinquennial revision in lease rent with reference to the prevailing market value of lands. It is their argument that no Lessee can reasonably project the feasibility of his business proposition if such periodic revisions are made with reference to a factor which may not be known with certainty to all concerned before a project is set up. This argument cannot be lightly brushed aside and definitely deserves serious consideration at the time of developing our own guidelines. Since the guidelines issued by the Government have been adopted and applied in all cases relating to Major Port Trust lands, a deviation only in respect of the TPT cannot be made. When our own guidelines are developed, it will be applied prospectively at all the Major Port Trusts.

10. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves an annual lease rent of Rs.2016/- per acre for the lands leased out by the TPT to M/s Tuticorin Sale & Marine Chemicals Ltd. with retrospective effect from 8 July 1998. This rate will be subject to the annual escalation clause stipulated in the concerned lease Agreement.

(S. Sathyam)
Chairman