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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 221

New Delhi 27 September 2002

NOTIFICATION

In exercise of the powers conferred by Sections 48 and 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 fixation of licence fee for entry of private equipment into the premises.

(**S. Sathyam**)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/107/2001-TPT

The Tuticorin Port Trust (TPT)

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Applicant

ORDER

(Passed on this 20th day of September 2002)

This case relates to a proposal received from the Tuticorin Port Trust (TPT) for fixation of licence fee for entry of private equipment into the port premises.

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

- (i). Prior to August 1992, private equipment were operated outside the security wall; and, accordingly the licence fee was fixed for those equipment.
- (ii). The Board of Trustees of the TPT in August 1992 decided to permit private equipment to operate inside the security wall at the same rate as applicable for operation outside the security area. The Government of India also approved this proposal.
- (iii). In fact, a higher licence fee can be fixed for the private equipment which operated inside the security area because the area of operation was enlarged.
- (iv). The port had suggested two separate rates; one for permitting the vehicles inside the security area and another rate for outside the security area in the general revision of rates undertaken during 1999. The Board of Trustees of the TPT, however, resolved to maintain the earlier classification of a uniform licence fee to operate private equipment inside and outside the security area. The Board of Trustees approved 50% increase over the pre-revised rate; and, the same was approved by the TAMP after deliberation with the various users.
- (v). The existing Scale of Rates, therefore, contemplates only one fee for permitting private equipment and vehicles to operate inside/outside the security area of the port.
- (vi). The Accountant General (Tamil Nadu and Pondicherry) has given a factual note titled "unauthorised entry of private vehicles inside the security wall resulting in loss of revenue" and sought clarifications from the TPT. The main issues raised by the Auditor in the factual note are summarised below:
 - (a). The TPT allowed private equipment inside the security wall to perform the functions of receiving, removing, shifting, transporting, storing and delivery of goods brought within the premises of the Port vide Section 42 (1) (b) of the Major Port Trust (MPT) Act 1963 without obtaining the prior approval of the Central Government as required in Section 42(3) of the MPT Act 1963.
 - (b). Though the Scale of Rates of the TPT does not contain any rate for the entry of cranes within the security wall, the TPT allowed the cranes inside the security wall by collecting a sum of Rs.11,280/-per annum per crane (which is an entry fee of cranes etc. into check posts I & II).
 - (c). Separate higher rates for entry of vehicles / equipment into security wall should have been fixed in view of the infrastructure created by the Port and vast scope for earning by private crane operators.

- (d). The owners of the cranes besides handling their cargo have also lent these on hire resulting into decline in the utilisation of ports cargo handling equipment which ultimately blocked the revenue inflow of the Port.
 - (e). Despite having 5 top lift trucks, the Port allowed private equipment thereby its own equipment languished. In view of this, the percentage of unutilised hours (idle hours) to the available hours was 87.6% in the last 3 years. The port has not assigned any specific reasons for this.
 - (f). The permission given to private equipment especially when the container could have been handled by the Top Lift Trucks available with the TPT resulted in a loss of revenue to the extent of Rs. 8.5 crores in respect of container handling alone during the years 1994-95 to 1996-97.
- (vii) In its response to the Audit Para, the TPT has stated the following:
- (a). The Port does not perform the functions of receiving, removing, shifting, transporting, storing and delivering of goods under Section 42 (1) (b) of MPT Act 1963. It merely provides the facilities for the above services and these services are undertaken by the Stevedores and C&F Agents.
 - (b). The private equipment are being permitted to operate within the security wall of the port based on the rates approved in the Scale of Rates under Scale U. Separate approval as per Section 42(3) of the Act ibid is, therefore, not required as the licence is being granted based on the conditions governed by the above scale.
 - (c). The entry of private handling equipment has no impact on usage of wharf cranes. There has been no addition in Front End Loaders and Fork Lift Trucks. Further, Front End Loaders are not suitable for handling timber logs and granite blocks. Further the mobile equipment have outlived their utility.
 - (d). The percentage of unutilised hours of Top Lift Trucks was in the range of 67.76% to 76.13% in the years 1994-95 to 1997-98. Taking into consideration the breakdown, maintenance and service of the equipment only three out of the five TLT were available at the berths at any point of time. It has clarified that the loaded containers were handled both at the loading point in the berth as well as unloading point at the paved area barring a few containers handled outside the paved area by private cranes.
 - (e). The policy of allowing private equipments in the Port has been followed only at the instance of the Government's guidelines. The private equipment were permitted in the port area not to replace the port's equipment; but, to supplement the ports' equipment so as to improve the productivity.
 - (f). The Audit's suggestion to have separate higher rates for entry inside security wall will be considered for incorporation in the ensuing revision exercise.
- (viii). Taking into consideration the remarks in the factual note and the TPT's reply, the Ministry of Shipping (MOS) vide its letter No.PR-20012/4/98-PG dated 4 July 2001 directed the TPT that the proposal for fixing higher rate for entry of private equipment in the port premises may be formulated and sent to the TAMP for approval.

- 2.2. In this backdrop, the Port has proposed the following:
- (i). The existing licence fee for vehicle / equipment operating outside the security wall is proposed to be increased by 20%.
 - (ii). The licence fee for entry of vehicles / equipment inside the security wall is proposed to be fixed at 25% above the licence fee fixed for the area outside the security wall.
- 2.3. The proposal has been approved by the Board of Trustees vide Resolution No. 85 dated 3 November 2001.
3. In accordance with the consultative procedure prescribed, the copy of the TPT proposal was forwarded to various port users / representative bodies for their comments. The comments received from them are summarised below:

Tuticorin Stevedores' Association (TSA)

The enhancement of licence fee will be an additional burden to the users due to the constraint in business. Thus, status quo may be maintained in the tariffs for the entry of private equipment in the port premises.

Tuticorin Port Transport & Equipment Owners' Association (TPTEOA)

- (i). The port has to provide facilities to importers, exporters and the vessel owners with good efficiency and fast turn-around of the vessels.
- (ii). In order to increase the volume of cargo traffic, the port shall provide certain facilities to the users at nominal cost; and, try to get its revenue from the vessel-related charges and cargo-related charges.
- (iii). The existing single licence fee may be maintained for the private equipment irrespective of whether the operations are carried out inside or outside the security wall.
- (iv). Most of the cargo operations are carried out inside the security wall only; and, hence all private equipment have to come inside the Port for effective cargo operations.
- (v). All the equipment of port have already earned revenue more than 20 times its value; and, now most of the time the port equipment are not in operating conditions.
- (vi). The Government of India is considering participation of private organisations in most of the service sectors and in fact in the TPT the Container Terminal is operated by private operator.
- (vii). The under-utilisation of container handling equipment is due to private participation by the PSA SICAL which has made the port equipment / TLT redundant. The same equipment are, however, used in the warehouse for lift on / lift off operations of import load containers and for movements in and around the port to ICD.
- (viii). The redundant and non-operational port equipment may be disposed off and more private participation may be encouraged for offering better services to the users.
- (ix). The licence fee prescribed for the private equipment shall allow entry to all areas – both inside and outside the Port Security Wall.

The Tuticorin Steamer Agents' Association (TSAA)

- (i). There is no justification to increase the licence fee for entry of private equipment working in the port area since this rates were increase by 50% in December 1999 only.
- (ii). As per the Government's direction, any revision in licence fee can be done at the time of general revision of port tariffs only; and, the revision shall not be more than 10% for both outside and inside the security wall.

Tuticorin Chamber of Commerce and Industry (TCCI)

- (i). The distinction between vehicles inside and outside the security wall is artificial.
- (ii). The Accountant General's approach is putting matters in the reverse direction in the context of the Government's policy of privatisation of ports.
- (iii). The Accountant General could have confined himself to the allotted field since there is a separate authority - TAMP to fix the rates.
- (iv). The instant proposal will push up the costs and consequently the exports and imports will decline.
- (v). There is no unauthorised entry like 'cattle trespass' as suggested by the Accountant General.
- (vi). If the Government decides that the operation is to be handed over to private operators then the idle equipment must be sold because the private operators are bound to utilise the enlarged operation in a commercial way.
- (vii). The proposed increase in licence fee for handcarts, animal carts, passenger carrier are atrocious since the Government is never going to operate this in parallel with private operators.
- (viii). The percentage of utilisation of port's mobile cranes, wharf cranes, fork lift trucks, front end loaders, top lift trucks are all put to lesser use because of sophisticated private equipment.
- (ix). The increase in the rates will be a set back to the port trust growth.
- (x). In view of the above points, the proposed increase in license fees may be dropped.

The Customs Licensed Agents' Association (CLAA)

- (i). The rates proposed for entry of private equipment inside the security wall of Zone A and Zone B are double. The Accountant General's observation is only for enhancing the rate and not for proposing double the existing rate.
- (ii). There is no justification for resorting an irrational and rash principle of enhancing the rate by 100%.
- (iii). The port did not suffer any loss on account of private carriers. There is, therefore, no reason for enhancing the rates for item Nos. 3, 4 and 5 viz, passenger carriers, carrier of goods and private cargo handling equipment.
- (iv). To keep pace with the modern business scenario and in accordance with directives received from the Government, berth no. 7 has been privatised

exclusively for container operations. On account of this, under utilisation of the port's equipment, especially TLT and container handling cranes are inevitable. Private cranes are used only where port equipment are not available.

- (v). There are no alternate equipment for wharf cranes of 3T, 6T, 10T and 10/4T. Further, fork lift truck of 3T and front end loader are not available.
- (vi). The Auditor General while calculating the "revenue forgone" by the port due to entry of private equipment has considered three moves in respect of laden containers which seldom occurs. The "revenue foregone" figure worked out, therefore, is a boosted figure.

Indian Chamber of Commerce and Industry (ICCI)

- (i). The TPT allowed entry of private equipment to supplement port's equipment which were found to be inadequate / insufficient to cater to user needs; and, also in line with Government's policy to encourage private participation in port sector.
- (ii). It will be, therefore, be reasonable to consider a nominal increase of 10% in License Fee for entry of private equipment for both inside and outside the security wall.

All India Chamber of Commerce and Industries (AICCI)

- (i). Private equipment were permitted inside and outside the security walls in accordance with the directions received in 1992 from the (then) Ministry of Surface Transport to encourage private participation in port sector. In view of this position, the Accountant General's remark that loss of revenue was due to unauthorised entry of private vehicles inside the security walls is wrong and arbitrarily addressed.
- (ii). The policy of allowing private equipment inside the port has been followed only based on the instruction from the MOST.
- (iii). The uninterrupted human resources as compared to other ports, has greatly attracted the users to shift operations to the Tuticorin Port.
- (iv). The port is marching towards privatisation in various areas of port operation by engaging contract labour or contract companies to supplement the port's need.
- (v). The proposed rates are exorbitant and warrant reduction, otherwise it shall defeat the very purpose for which private equipment were deployed.
- (vi). The instant proposal of the TPT based on the issues pointed out by the Senior Deputy Accountant General of Tamil Nadu and Pondichery are contradictory to the vogue existing at the TPT.
- (vii). As per the Government of India's policies for privatisation of Tuticorin Port and encouragement for BOT (Built, Operative, and Transfer) operation, the TPT signed a 30 years contract with the PSA SICAL. This resulted into a sophisticated technology in container handling activity and raised the growth of container traffic manifold.
- (viii). The performance of any port is not counted in terms of utilisation of port equipment, but; considered in terms of quick turn around of vessels and improvement in productivity. In order to meet the peak demand when two or three container vessels are working at a time it is necessary to have spare capacity of equipment like that of private sector equipment working at the TPT.

- (ix). The entry of private handling equipment do not have any impact in respect of wharf cranes which cannot be substituted. Further, there is no increase in the number of fork lift trucks and front end loaders. Further, the port's equipment are not suitable for handling timber logs and granite block; and, the mobile equipment have almost outlived their utility.
- (x). If the port equipment are idle, and sick or not suitable for work it should have been disposed off as there is no meaning in blocking of the capital investment on idle equipment.
- (xi). It will be very difficult for private sector organisation as port users to survive in the intense of global competition unless the levies charged for various vehicles equipments for the entry into the port are reduced to the previous rate prior to revision.
- (xii). In this backdrop, the instant proposal of the TPT may be deferred.

Container Shipping Lines Association (CSLA)

- (i). The Government's directive to change the applicable tariff is clearly for operating equipment like cranes, etc., and it shall not be considered for general revision of rates for all equipment.
- (ii). There is no justification for proposing increase in the tariff for the items like hand carts, animal carts, passenger and goods carriers, issue of duplicate licenses, since they are not private cargo handling equipment.
- (iii). It seems that private cargo handling equipment are still allowed to supplement the port's own capacity.
- (iv). The port may claim that it is losing revenue when the private operators offer the same service at a lower price to attract customers. In such cases the licence fee on a per entry basis or on operating hours basis may be prescribed so as to maintain the port's rates.
- (v). Instead of proposing adhoc increase in the rates by a fixed percentage, the TPT must consider the average revenue lost per move per month per equipment or any other measurable means.
- (vi). The port shall give rebate in tariff in case the port does not have the requisite equipment and the user has no other option but to make its own arrangements.

4.1. A copy each of the comments received from the various port users / representative bodies of port users was sent to the TPT as feed back information / comments.

4.2. In response to the comments of the various users, the TPT has stated the following main points:

- (i). The proposal is as per the directions of the Government based on the Factual Note raised by the Accountant General (Tamil Nadu and Pondicherry) in the absence of a separate higher rate for entry inside the Security Wall of the Port. Hence, the proposal to increase the Licence for Entry of private Equipment is in order.
- (ii). The proposal of fixing the licence fees for entry of equipment inside the security area at double the rates of licence fee applicable outside the security area was modified by the Board with 25% increase over the fee for entry outside the security area of the port.

- (iii). Reduction in the proposed rate / modification of the proposal is not possible as the port has to comply with the directions of Government.

5.1. A joint hearing in this case was held on 6 June 2002 in the TPT along with two other cases relating to the TPT that is the proposal of the TPT for general revision of Scale of Rates and a proposal for revision of special rate for capital dredging. At the joint hearing, the following submissions were made relevant to this case:

The Tuticorin Port Trust (TPT)

We are financially self-reliant. We get no grants. We need a lot of funds to maintain roads, etc.

The Container Shipping Lines Association (CSLA)

Be selective. Why go in for an across the board increase? (The Chairman of TPT says: this is only to regulate entry; revenue earning is nominal.)

Tuticorin Custom Licensed Agents' Association (TCLAA)

Do not allow the increases. Let the TPT recast; compare with other ports; and, come up with a meaningful proposal.

Tuticorin Port Transport and Equipment Owners Association (TPTEOA)

- (i). There are two different licensing fees inside security wall and outside security wall. Nowhere else does such a system prevail.
- (ii). For vehicles and cargo handling equipment, this works out to substantial proportions. No increase or change must be allowed. Let the old rates continue.

5.2. At the joint hearing, the TPTEOA has furnished a comparative statement of the licence fee applicable at the TPT at the CHPT. This statement indicates that the licencing fee for private cargo handling equipment is Rs. 15 per day, Rs. 150 per month and Rs. 1500 per annum in the CHPT as against the existing TPT rate of Rs. 120, Rs. 1875 and Rs. 16920 applicable for the same period. The TPTEOA has also furnished the licensing fee applicable at the Cochin Port Trust.

6. With reference to the totality of information collected during the processing of this case the following position emerges for consideration:

- (i). The existing Scale of Rates approved by this Authority in December 1999 prescribes a uniform licence fee for entry of the vehicles/ equipment inside the security wall or outside the security wall in Zone A and B. This was approved based on the TPT proposal. The proposal now submitted by the TPT is in the backdrop of directions received from the (then) Ministry of Shipping (MOS) for fixing higher rate for entry of private equipment in the port premises. The MOS has given this directions taking into consideration the points brought out by the Accountant General (Tamil Nadu and Pondicherry).
- (ii). This Authority does not like to go into the issues raised by the Accountant General and the stand of the TPT thereon. Nevertheless, one such issue involved relates to a provision in the Scale of Rates vis-à-vis compliance of a requirement set out in the Statute, it becomes necessary to clarify that the SOR of a major port is subordinate to the main legislation; and, it cannot be taken to substitute a specific arrangement required by the statute. Provisions in the SOR are only to supplement such a requirement by specifying a more detailed working arrangement.

- (iii). The TPT has proposed to increase the licence fee for entry of vehicles/equipment by 20% as against 10% increase proposed for all the other tariff items in the general revision proposal. The TPT has not furnished any separate cost statement for this relevant activity to justify the 20% increase proposed.

Though the TPT has not furnished any separate cost statement for this activity, the cost statement for the cargo handling activity furnished by the TPT in the general revision proposal shows a revenue surplus position. In view of the surplus position in the port as a whole for the years 2002-03 and 2003-04, this Authority in the general revision proposal has decided not to allow any revision of the existing tariffs. This position will hold good in the case of licence fees for entry of private vehicles and equipment into the port premises; and, the existing rates will continue to apply as heithertofore for entry of private vehicles and equipment outside the security area. The TPT proposal for introducing a new tariff for entry into the security area has been examined separately later in this Order.

- (iv). The TPT has proposed that in case of entry of private vehicles/ equipment inside the security wall and also for issue of duplicate licences under this category, 25% above licence fee prescribed for vehicles/ equipment entering outside the security wall shall apply. The TPT has pointed out that approval of the higher fee inside the security wall is sought from this Authority in accordance with the directions received from the Ministry of Shipping (MOS).

The users have objected to this proposal on the grounds of non-availability of equipment from the TPT, Govt. policy to encourage private participation, etc. It is true that the practice followed by different major ports are not uniform with regard to levy of licence fees for permitting private equipment. It will however, be relevant that a port can seek royalty/revenue share from a Private Operator in terms of the privatisation model adopted for allowing concession to him to operate within its area of jurisdiction. Viewed in this perspective, the TPT proposal is found to be reasonable and, therefore, approved.

- (v). The TPTEOA has sought to compare the rates at neighbouring ports for allowing private equipment. As has been pointed out earlier, the practice is not uniform across the major ports. At some ports, no licence fees are levied. At some ports, a percentage of prescribed equipment hire charges is levied for making good idling of port equipment and for permitting private equipment. For instance, at the CHPT 50% of heavy lift crane hire is levied for not using such cranes. Further, 10% of crantage is levied for allowing private cranes to achieve faster turnaround of cargo. The TPT has proposed to levy only a premium of 25% over the licence fees for allowing the private equipment inside the security area, which is found to be reasonable since main cargo transfer operation takes place within the security area. Besides, as pointed out by the TPT, the revenue implications arising out of this proposed levy is not very significant; and, the TPT has to incur expenditure on maintenance of roads, etc.

- (vi). The private equipment operators levy a charge for deployment of their equipment for cargo operations which is ultimately passed on to importers/exporters. Subject to fulfillment of conditions laid down under Sec. 42 of the MPT Act, the ceiling rates to be levied for deployment of private cargo handling equipment can be seen to be regulated by this Authority. It is noteworthy that all the major port trusts have already been advised to formulate suitable proposals to regulate ceiling rates for identified services provided by persons authorised by them under the provisions of Sec 42 of the Act. This arrangement has been adopted since the port trusts are expected to enforce such ceiling rates while licencing such services. In the case in hand, the TPT has not proposed any such ceiling rates. The TPT is, therefore,

advised to examine this issue in detail and come up with a suitable proposal for fixing ceiling rates for deployment of private cargo handling equipment within its area of jurisdiction

- (vii). The proposed decision to prescribe rates for licence fee for entry of vehicle / equipment has already been incorporated in the revised Scale of Rates approved in the case relating to general revision of tariffs at the TPT on which a separate Order being considered has been passed by this Authority earlier today.

7.1. In the result, and for the reasons given above, this Authority decides to revise the licences fee for entry of vehicle and private equipment into the port premises as follows:

Sl. No.	Particulars	Unit	Rates (in Rs.)	
			Entry into Check Post I and II (excluding inside the Security Wall) Zone A and B	Entry into Check Post I and II (including inside the Security Wall) Zone A and B
1.	(a). Hand Carts-Per day	Each	3.00	3.75
	(b). Hand Carts - Per annum	Each	75.00	93.75
2.	(a). Animal Carts - Per day	Each	3.00	3.75
	(b). Animal Carts - Per annum	Each	150.00	187.50
3.	Passenger Carriers – Per day	Each	15.00	18.75
4.	(a). Carrier of goods- Per day	Each	15.00	18.75
	(b). Carrier of goods - Per annum	Each	1,800.00	2,250.00
5.	(a). Private Cargo Handling Equipment - Per day	Each	120.00	150.00
	(b). Private Cargo Handling Equipment -Per month	Each	1,875.00	2,343.75
	(c). Private Cargo Handling Equipment - Per half year	Each	9,000.00	11,250.00
	(b). Private Cargo Handling Equipment - Per annum	Each	16,920.00	21,150.00
6.	Issue of duplicate licence against 1 to 3	Each	60.00	75.00
7.	Issue of duplicate licence against 4 and 5	Each	90.00	112.50

7.2. The revised rates will come into effect after expiry of 15 days from the date of notification of the revised Scale of Rates approved in the general revision case (case no. TAMP/31/2002-TPT) in the Gazette of India.

(**S. Sathyam**)
Chairman