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TARIFF AUTHORITY FOR MAJOR PORTS

G.No.250

New Delhi,

17 July 2019

NOTIFICATION

In exercise of the powers conferred under Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal of the Deendayal Port Trust (DPT) for incorporating a separate tariff schedule for Tuna port as Schedule V in the existing Scale of Rates (SOR) of DPT, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

TARIFF AUTHORITY FOR MAJOR PORTS
Case No.TAMP/20/2018-DPT

Deendayal Port Trust

- - -

Applicant

QUORUM

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. Rajat Sachar, Member (Economic)

ORDER

(Passed on this 14th day of June 2019)

This case relates to the proposal received from Deendayal Port Trust (DPT) for incorporating a separate tariff schedule for Tuna port as Schedule V in the existing Scale of Rates (SOR) of DPT.

2.1. This Authority had vide its Order No.TAMP/18/2016-KPT dated 21 June 2016 disposed of the general revision of SOR proposal of DPT and approved revised SOR. The revised SOR and Performance Standards approved by this Authority vide Order dated 21 June 2016, were notified vide Gazette No.287 dated 12 July 2016. Subsequently, a speaking order was notified vide Gazette No.319 dated 10 August 2016. The SOR came into force after expiry of 30 days from the date of notification of the SOR and Performance Standards in the Gazette of India i.e. from 11 August 2016. The validity of SOR is prescribed till 31 March 2019. The validity of said existing SOR of DPT is extended upto 30 September 2019 and communicated to all Major Port Trusts including DPT vide our letter No.TAMP/39/2005-Misc. dated 29 March 2019.

2.2. The DPT has now vide its letter dated 13 March 2018 submitted its proposal to incorporate a separate tariff Schedule for Tuna Port as Schedule V in the existing SOR of DPT. The main points made by DPT are summarized below:

- (i). Earlier there used to be separate SOR for Tuna Port and the rates were fixed keeping in view the type of crafts, nature of cargo being handled, draft requirement etc. However, in the revision in the SOR of DPT (w.e.f. 11 August 2016), under Chapter I - General Terms and Condition No.1.2, note (xv) stipulates as follows:
"Kandla rates shall be applicable to Tuna port."

This has resulted into exorbitant increase in port charges leviable at Tuna.

- (ii). A representation dated 09 September 2016 was received from Salaya Sailing Vessels Owners' Association (SSVOA) regarding Review of Port Charges of Tuna Port of DPT. The Association has stated that as per the new SOR, different types of port charges have increased by about 22% to 36% for other vessels except Indian Sailing Vessels (Indian Country Craft). Port charges have increased for sailing vessels upto 700%, which is injustice to the poor Indian Sailing Vessels.
- (iii). Further, the Association has pleaded that such high charges are not affordable by the poor industry and this will impact the trade as well as Indian Sailing Vessels Industry.
- (iv). TAMP had also forwarded the representation of SSVOA vide letter No.TAMP/18/2016-KPT dated 12 September 2016 for comments of DPT. [We have, however, not heard from the DPT in this regard.]
- (v). M/s.Adani Kandla Bulk Terminal Private Limited (AKBTPL) has also represented on applicability of Kandla Rates to Tuna rates and hence exorbitant hike in License Fee payable. M/s.AKBTPL has represented that there is steep increase of 2700% in license fee due to applicability of Kandla rate to Tuna rate, which put their facilities into unviable propositions.
- (vi). TAMP vide letter No.TAMP/42/2009-KPT dated 21 September 2016, had forwarded a copy of representation received from the AKBTPL dated 16 August 2016 on deletion of Chapter-V of the then existing SOR relating to rates for Tuna port as proposed by the DPT and had requested to file a suitable proposal towards rental for the lands at

Tuna port following the applicable Guidelines. Again TAMP vide email dated 10 October 2017 had forwarded copy of email dated 27 September 2017 received from M/s.AKBTPL on the same matter, requesting to file a suitable proposal towards rentals for lands at Tuna port following the applicable Guidelines.

- (vii). It is justified to review of SOR for Tuna Port on the following grounds:
- (a). There has been increase to the tune of about 200% in wharfage charges, 150% in Berth Hire Charges and 500% in Port Dues for Tuna Port, which is exorbitantly high.
 - (b). No expenditure is incurred towards dredging at Tuna by DPT.
 - (c). Bare minimum staff is posted at Tuna, as such, the cost of manpower is very less.
 - (d). Livestock is handled at Tuna which hardly cause any damage to the wharf etc.
 - (e). Livelihood of the village of Tuna, Vandi and other nearby village is dependent upon export of Livestock from Tuna.
 - (f). Mechanized craft owners are not so rich and are dependent upon loans from Bank / Financial Institutes.
- (viii). Accordingly, a Committee comprising of Traffic Manager, Deputy Conservator, Chief Engineer and Financial Advisor and Chief Accounts Officer had been constituted for reviewing the SOR for Tuna Port.
- (ix). The Committee in its meeting held on 22 November 2016 (copy furnished as Annexure-A) had expressed that DPT is not incurring any expenditure on dredging or navigational aids for Tuna Port and the rates prescribed for DPT may not be applied to Tuna Port.
- (x). Regarding Vessel Related Charges of Tuna Port, the Committee, after deliberation, decided that all Vessel Related Charges will be increased from old rates, which were approved in 2011, with an appropriate escalation with 100% Wholesale Price Index (WPI) and the rate shall be fixed accordingly.
- (xi). Regarding Cargo Related Charges of Tuna Port, the Committee discussed that DPT has invested considerable amount on creation of infrastructural facilities at that port such as roads, berth, barge jetty, backup area, lighting, etc. and as such reducing the Cargo Related Charges is not appropriate. However, as requested by port users viz. M/s.SSVOA, a reduced rate for 'livestock' and other cargo being handled by country craft be considered favorably and may be worked out based on escalation to be given to the 2011 rate.
- (xii). Further, the Committee recommended that the storage charges may be bifurcated into two categories viz. Pucca Plots and Kutchha Plots. For Pucca plots the rate applicable to Kandla Port will apply and for Kutchha Plots, the rate will be as per latest valuation given by the Valuer for Tuna Port area and approved by the Land Allotment Committee (LAC) in its meeting held on 20 January 2016. The recommendation of the LAC to consider the highest rate arrived at by the valuer is given in the following table:

Sr. No.	Particulars	CRZ Zones	Suitable for purpose	Developed / Undeveloped	High Tide / Creek area	Valuation	(-) less (25%) for lease hold land	Lease rent @ 6% of final valuation amount (₹) per M ²
1	Land on east side of approach road leading to Barge Handling jetty at Tuna (from NH no. 8A to Tuna in length of 10 kms)	CRZ-III	Salt production, CFS, Tank farms Industries, warehouses	Undeveloped but having approach from 10 km road	Open undeveloped land	₹.2,645/-	1,983.75	119.03
2	Land beyond half kilometer from the bank of creek	CRZ III	Suitable for warehouses, salt production CFZ Tank Farms	Undeveloped	Open land	₹.2,300/-	1,725.00	103.50
3	Land within half kilometer from the Creek of Barge	CRZ-II	Suitable for warehouses, CFZ	Undeveloped	High tide area	₹.1,955/-	1,466.25	87.98

	Handling, jetty having no waterfront		Tank Farms					
4	Land having waterfront and upto half kilometer from the Barge Handling Jetty i.e. on North side	CRZ-I	Suitable for jetty, Logistic operation & CFZ	Undeveloped	High tide area	₹.1,725/-	1,293.75	77.63 #

[# ₹84.03 proposed by DPT is arrived by the port by taking ₹77.63 and applying 2% escalation per annum from 2013 to 2016.]

[The DPT has subsequently vide its letter dated 11 April 2018 clarified that while proposing storage charges for Kutchha plots of Tuna Port, reliance is placed only for determining the rates on latest land valuation given by valuer under amended LPG, 2014. However, the proposed rate is covered under cargo related charges under Tariff Policy, 2015.]

- (xiii). The port has stated that License fee for land at Tuna, payable by AKBTPPL was ₹9.00 per sq. mtr. p.a. as per 2011 Order. This had increased to ₹302.40 per sq. Mtr. p.a. on account of Revision of SOR w.e.f. 11 August 2016. Now, as per the recommendation of the Committee, the license fee is pitched at ₹84.03 per sq. Mtr. p.a. The above figures in tabular form is placed as below:

(Total Area of 1066345.007 Sq. mtr.)

License fee before Revision of SOR as per 2011 SOR	License fee as per Revision of SOR as per 2016 SOR	Rates recommended by Committee (as on 2016)
Per sq. mtr. p.a.	Per sq. mtr. p.a.	Per sq. mtr. p.a.
9.00 #	302.40 @	84.03 \$

- (xiv). The financial implication of reduced rates applicable at Tuna Port will be approximately ₹129.53 lakhs (i.e. reduction) in revenue from Cargo related and Vessel related charges. As regards License fees recoverable from M/s.AKBTPPL, since same has not been considered in ARR as per Tariff Guidelines, 2015, being Public Private Partnership (PPP) project, hence there is no financial implication.

[As per clause 2.9 of Working Guidelines issued by TAMP, the Major Port Trusts need to make detailed working of revenue estimation indicating each of the tariff items in the proposed SOR for corresponding traffic as in clause 2.8 above and establish itself that the sum of the revenue so determined from all the tariff items in the SOR is within the ceiling of the indexed ARR determined in clause 2.7. above duly certified by a practicing Chartered Accountant/ Cost and Management Accountant. Thus, the TAMP Guidelines do not require port to estimate revenue from Licence fees.

The ARR estimated by the DPT in the last tariff revision under Tariff Policy 2015 for Licence (storage) fees is ₹24.11 lakhs. The total revenue estimated at ₹83,551.58 lakhs includes Licence (storage) fees then proposed by DPT.]

- (xv). The proposal was placed before the Board in its meeting held on 26 December 2017 and the Board of Trustees of DPT has approved the following:
- To add a separate tariff rate for Tuna Port as Schedule V of the Scale of Rate of DPT furnished as Annexure – D and to obtain approval of TAMP.
 - To rename existing Chapter V as Chapter VA.

2.3. To summarise, the DPT has proposed for incorporation of following Chapter V – Rates for Tuna Port in the existing SOR of DPT:

CHAPTER V - RATE FOR TUNA PORT

Sr. No.	Particulars	Foreign Going Vessel (in US \$)	Coastal Vessel (in ₹)
A.	Schedule 1 - Port Dues		

1	Vessels of 10 GRT & Upwards (except fishing boats)	Rate per GRT or part thereof	0.0978	1.3687
2	Sailing Vessels of 10 GRT & Upwards (except fishing boats)	Rate per GRT or part thereof	0.0587	1.1732
B. Schedule II - Berth Hire Charges				
1	Vessels above 10 GRT	Rate per GRT per hour or part thereof	0.0025	0.0391
C. Schedule III - Beaching Charges				
1	Beaching Charges	Rate per NRT per MTH or part thereof	0.0196	0.3911
Anchorage Charges				
Sea going mechanically propelled vessels				
(a). Kandla OTB			*	*
(b). Inner Anchorage (per GRT)		Rate per 1 hour or part thereof #	0.0010	0.0255
			Foreign Going Vessel (in ₹)	Coastal Vessel (in ₹)
D. Schedule IV - Wharfage charges				
A. Liquid (in bulk)				
1	POL products in bulk other than crude oil	M.T. Or part thereof	50.00	50.00
2	Other liquid cargo including bunkers	M.T. Or part thereof	50.00	30.00
B. Dry Cargoes				
1	Fertilizer and raw material including sulphur	M.T. Or part thereof	33.60	20.16
2	Foodgrains, cereals, pulses and oilseeds	M.T. Or part thereof		
(i). Bulk			15.00	9.00
(ii). Break Bulk			9.00	5.40
3	Cement and clinker	M.T. Or part thereof	22.50	13.50
4	Ores and minerals (in all forms)	M.T. Or part thereof	16.88	10.13
5	Granites and marbles	M.T. Or part thereof	22.50	13.50
6	Metals (Ferrous/non-ferrous & metals scrap including pipes, pig iron, coil sheet & cokes.	M.T. Or part thereof	37.50	22.50
7	Animals including chicken, sheep & goats	Each	6.52	3.91
8	Animals (other than above)	Each	15.64	9.39
9	Animal products, bone meal, hides and skin	M.T. Or part thereof	9.78	5.87
10	Oil cakes and fodder	M.T. Or part thereof	15.00	9.00
11	Waste paper and newsprint	M.T. Or part thereof	30.00	18.00
12	Construction material and sand	M.T. Or part thereof	16.88	10.13
13	Coal and coke (including firewood)	M.T. Or part thereof	25.20	15.12
14	Wood, timber and bamboo	M.T. Or part thereof **	30.00	18.00
15	Jute & jute products and coir products	M.T. Or part	22.50	13.50

		thereof		
16	Cotton including cotton waste	M.T. Or part thereof	22.50	13.50
17	Salt	M.T. Or part thereof	15.00	9.00
18	Sugar	M.T. Or part thereof	15.00	9.00
19	Asbestos	M.T. Or part thereof	-	-
20	Synthetic resin and wood pulp	M.T. Or part thereof	45.00	27.00
21	Arms, ammunition, explosives and defence stores	M.T. Or part thereof	97.50	58.50
22	Dry chemicals including soda ash, HDPE, etc.	M.T. Or part thereof	22.50	13.50
23	Other unspecified goods	M.T. Or part thereof	52.50	31.50
E.	Schedule V - Rental fees			
1	For open space	Rate per 10 sq. Mtr. or part thereof per month or part thereof (in ₹)		
	(i) Kutchha Plots			84.03
	(ii) Pucca Plots			432.00
2	For covered space			837.00
3	Storage of timber on board	Rate per 10 sq. Mtr. or part thereof per day or part thereof (in ₹)		1.96
F.	Schedule VI - Trolley Hire Charges		Rate per day or part thereof (in ₹)	19.55

[# The port has not prescribed unit of levy for Anchorage charges for Inner Anchorage for Tuna port. Since the rate proposed for Anchorage charges for Inner Anchorage for Tuna port is same as rate proposed for Kandla land in SOR of 2016 Order under schedule 3.3 – Schedule of Anchorage charges, same unit of levy is proposed in above table.

* As regards to Anchorage charges for Kandla OTB, DPT has subsequently vide its email dated 20 November 2018 clarified that same may be treated as NIL.

** As regards to Wharfage charges for Wood, timber and bamboo, DPT has subsequently vide its email dated 30 November 2018 clarified that unit of levy for the said item may be read as Cu. M. as approved in 2016 Order instead of M.T. Or part thereof.]

2.4. In this backdrop, the DPT has requested to approve the proposed SOR for Tuna Port at Chapter V as given in para No.2.3 above. Consequently, the existing Chapter V relating to tariff for Marine related services provided by DPT at Dry bulk terminal operated by AKBTPPL at Tuna / Tekra is proposed to be renamed as Chapter VA.

3.1. The DPT has furnished a copy of the Minutes of the Meeting of the Committee to review the SOR of Tuna Port and lease rent at Tuna Port held on 22 November 2016, Minutes of the Meeting of the LAC held on 20 January 2016 for fixation of rate structure of Tuna Land alongwith a copy of the Land Valuation Report (year 2012) of port estate at Tuna Port, a copy of the Board Approval dated 26 December 2017 and a copy of the draft Chapter - V - Rate for Tuna Port for insertion in the existing SOR of DPT.

3.2. It is relevant here to state that in the LAC minutes dated 20 January 2016 in the first para it is recorded that the LAC recommended that the 2012 valuation (report furnished in 2013) may be returned back to the Valuer for review, particularly considering the differences between Leasehold Land and Freehold Land. Accordingly, the matter was referred by DPT to the valuer vide DPT letter dated 28 December 2015. The LAC minutes states that the valuer has submitted the revised valuations Report on 19 January 2016. There is no further mention of the 2016 valuation report.

Moreover, from the LAC minutes it is seen that the valuation done in the year 2012 (report furnished in 2013) is considered by the LAC. The 2012 valuation report is furnished by the DPT. The DPT has not furnished a copy of revised valuations report dated 19 January 2016.

4.1. It is relevant here to mention that, prior to existing SOR of DPT approved vide Order No.TAMP/18/2016-DPT dated 21 June 2016, the then SOR prescribed separate schedule of rates in respect of vessel related charges and wharfage related charges for Tuna port.

4.2. In the said last revision of SOR, the DPT had done away with a separate schedule of rates for Tuna port. Instead, the port had proposed to insert a note stating that the tariff applicable for Kandla port is applicable for Tuna Port also as against separate schedule of rates for Tuna port in the pre-revised SOR justifying that Services provided at Tuna port are at par with Kandla. The DPT responded that Tuna port has been provided with all the infrastructural facilities like road and rail connectivity, etc. and DPT had confirmed that the services, infrastructure, equipment and facilities provided at Tuna are comparable to those rendered at Kandla division. Subsequently, the DPT has also stated that the revenue impact of the proposed applicability of Kandla port rates to Tuna port has been captured in the revenue estimates. Based on the justification and clarification furnished by the port, the note proposed by DPT about applicability of Kandla rates to Tuna port was approved in the Order No.TAMP/18/2016-KPT dated 21 June 2016 as note No.1.2 (xv) under General Terms and Conditions.

4.3. The DPT has now proposed for separate Schedule of Rates for Tuna Port.

5. On perusal of the DPT proposal dated 13 March 2018, the DPT was requested vide our letter dated 27 March 2018 to furnish information / clarifications on few points by 06 April 2018. The DPT vide its letter dated 11 April 2018 has furnished its reply, after a reminder. A summary of information / clarifications sought by us and reply furnished by DPT is tabulated below:

Sr. No.	Information / clarification sought by TAMP	Reply of DPT
(i).	<p>(a). The subject proposal of DPT seeks approval for separate rates proposed for Vessel Related Charges, Cargo Related Charges and Miscellaneous charges as well as rental for Tuna port. As DPT is well aware, the revision of Vessel Related Charges, Cargo Related Charges and Miscellaneous charges are governed by the Tariff Policy 2015. Whereas, for fixation of revised rental for Kutchha plots and Pucca plots, the port has followed Amended Land Policy Guidelines (LPG), 2014 and has furnished Land Valuation Report, Minutes of meeting of the LAC and approval of the Board of Trustees of DPT which are pre-requisite for revision of rentals under the amended LPG, 2014.</p> <p>(b). With reference to the above proposal of DPT clubbing the rates proposed for Vessel Related Services, Cargo Related Services and Miscellaneous Services governed by the Tariff Policy 2015 with fixation of rentals governed under amended LPG, 2014, it is relevant to state that both these guidelines prescribe different methodology for fixation of rates. More pertinently, the periodicity of revision of Vessel Related Charges, Cargo Related Charges and Miscellaneous charges under Tariff Policy 2015 is every three years. The validity of existing SOR approved by the Authority vide Order No.TAMP/18/2016-KPT dated 21 June 2016 is till 31 March 2019. The DPT has</p>	<p>In the earlier General Revision of SOR approved by TAMP vide its Order No.TAMP/61/2009-KPT dated 18.01.2011, there was a separate Chapter i.e. Chapter – V Rates for Tuna port, which included following Schedules: Schedule – I : Port Dues Schedule – II : Berth Hire Charges Schedule – III : Beaching Charges Schedule – IV : Wharfage Charges Schedule – V : Rental Fees Schedule – VI : Trolley Hire Charges</p> <p>The aforesaid rates were approved by the Authority following the principles of Tariff Guidelines, 2005.</p> <p>In the present proposal, while proposing the Storage Charges Rates for Kutchha plot of Tuna Port, only for determining the rates, reliance was made on latest valuation given by the Valuer for Tuna port area and approved by the LAC. However same is proposed and covered under Cargo related services of the General revision of SOR following the principles of Tariff Guidelines, 2015. Hence there is no clubbing of the provision of amended LPG, 2014 in proposing the Storage charges rates for Kutchha plot of Tuna port and therefore compliance of the provisions of amended LPG, 2014 is not required.</p> <p>It is to state that proposal for revision of</p>

	<p>proposed insertion of the proposed rate for Tuna port in existing SOR under Chapter – V which will, therefore, be valid till 31 March 2019. However, as regards revision of rentals, as per Clause 13 (c) of the amended LPG, 2014 revision of SOR (rental) is due once in every five years.</p> <p>(c). Another relevant part is on the annual escalation. As per note (xviii) (a) and (b) under Chapter - 1.2 - General terms and conditions, of existing SOR of DPT, which flows from Clause 2.8, 2.9 and 3.2 of the Tariff Policy 2015, the rates prescribed in the existing SOR are subject to 100% WPI escalation subject to achievement of Performance Standards notified by the Authority. Whereas, under amended LPG, 2014, the port based on approval of Board of Trustees of the port can seek minimum 2% annual escalation in the rentals.</p> <p>(d). In view of the above distinction in the Tariff Policy 2015 and amended LPG, 2014, the DPT to clarify as to whether the proposal of DPT of clubbing the proposed rental of Tuna port in the general SOR will comply with the provision of amended LPG, 2014.</p>	<p>Storage charges rates for Kutchha plot of Tuna port is covered under Cargo related services i.e., Storage space is to be allotted for storage of Cargo and charges shall be levied on the basis of stay of cargo, and therefore same is not allotment of land for Lease & License basis as per LPG, 2014. Hence proposed Storage charges rates for Kutchha plot at Tuna are not covered under LPG, 2014, instead same is covered under the General revision of SOR following the principles of Tariff Guidelines, 2015 and hence same cannot be delinked.</p>
(ii).	<p>The DPT may consider to delink the proposal for revision of rental for Tuna port from the general revision of SOR of Tuna port and file a separate proposal in this regard. In fact, even the Visakhapatnam Port Trust (VPT) had filed a proposal delinking License fee (Storage charge) based on the area earlier forming part of the general SOR under Tariff Guidelines 2005 to License fee following LPG, 2014 on issue of LPG, 2014 by the Ministry of Shipping (MOS). The Authority has accordingly, based on proposal of VPT approved Order No.TAMP/48/2014-VPT dated 15 January 2016 in this regard under LPG, 2014.</p>	
(iii).	<p>In light of the above points, the DPT is requested to furnish its clarification and respond positively by 06 April 2018.</p>	<p>Hence, TAMP, is once again requested to kindly approve the proposal SOR for Tuna Port, placed as Annexure – D of the proposal sent vide this office letter no.FA/COST/92 dated 13.03.2018, as per Section 48, 49 & 50 of the MPT Act, 1963.</p>

6. In accordance with the consultative procedure prescribed, a copy of the proposal of DPT dated 13 March 2018 was forwarded vide our letter dated 18 April 2018 to the concerned users/ user organisations as suggested by DPT vide its e-mail dated 20 March 2018 seeking their comments. We have not received any comments from any users / user organisations except AKBTPPL vide its email dated 7 May 2018. The comments received from the AKBTPPL was forwarded to the DPT as feedback information. The DPT has responded to the comments of Adani Kandla Bulk Terminal Private Limited (AKBTPL) vide its email dated 21 May 2018.

7. The DPT while furnishing comments on comments of AKBTPPL has given reference to TAMP letter No.TAMP/42/2009-KPT dated 21 September 2016 forwarding representation dated 16

August 2016 of AKBTPL and has stated that the TAMP has requested DPT to file the proposal for revision of lease rent for lands at Tuna. In this regard following factual position is brought out for reference:

- (i). The AKBTPL in its letter dated 16 August 2016 represented regarding payment of differential amount on license fee for land. The main points made by AKBTPL are as follows:

AKBTPL drawing reference to Article 9.1 of Concession Agreement has stated that whilst the license fee for waterfront is constant at ₹8 crores during entire tenure of Concession, the license fee for land shall be calculated as per the prevailing SOR set by TAMP from time to time.

The License Fee for land notified for this project was as per Chapter V, Schedule V - Rental Fees at Serial No.1 for open space. Now, as per new SOR the said item is not notified by TAMP, neither commensurate item is available in the new SOR of DPT. Even otherwise also, in view of the signed Concession Agreement the SOR of DPT for Kandla lands is not applicable for Tuna Dry Bulk Terminal, this view is clearly brought out in the TAMP Notification No.285 dated 2 November 2010 at Clause 11 (viii) (c) which is reproduced below for quick reference.

“(c) License fee for the 902600 sq. meters land area is estimated by KPT at ₹10.50 per square meter per month based on the rate of storage fees on general cargo prescribed in the existing SOR of KPT (₹105 per 10 square meter for occupation beyond 180 days). The guidelines require License fee for lands to be calculated as per the Scale of Rates of the Port Trusts. It is needless to mention that rate as applicable for the relevant land should be considered. The present proposal of the port is for fixing the upfront tariff applicable to a dry bulk terminal off Tekra near Tuna which will be about 17 kilometres on west of mouth to Kandla creek. The existing SOR of KPT prescribes separate rates for Tuna under chapter-V. Sl. No.(1) of Schedule V specifies rental for open space at ₹7.50 per 10 sq. mtr. per month. The estimated License fee calculated by KPT by adopting License Fee prescribed for Kandla lands is modified accordingly with reference to the specific rate prescribed in the Scale of Rates for Tuna”.

Apart from above, the license fees is considered constant at ₹81 lakhs per annum and thus, cannot increase during entire tenure of Concession Period of 30 years, similar to the constant water front charges as per Concession Agreement.

- (ii). This was followed up by reminder vide its email dated 27 September 2017 by AKBTPL.
- (iii). In response to above, TAMP has vide letters dated 21 September 2016 and 10 October 2017 forwarded each of the communication received from AKBTPL dated 16 August 2016 and 27 September 2017 respectively to DPT stating that the representation received from the AKBTPL has arisen due to deletion of the Chapter – V of the then existing SOR relating to rates for Tuna port as proposed by the DPT. Hence, the DPT was requested to file a suitable proposal towards rental for the lands at Tuna port following the applicable Guidelines.

8. A joint hearing in this case was held on 11 June 2018 at the DPT premises. The DPT made a brief Power Point presentation of its proposal. At the joint hearing, the DPT and the concerned users/ user organizations have made their submissions.

9. As agreed at the Joint hearing, AKBTPL vide its letter dated 15 June 2018 has given further written submissions. The written submissions received from the AKBTPL was forwarded to DPT as feedback information vide our letter dated 22 June 2018 to furnish its comments. This was followed by the reminders dated 28 June 2018 and 13 July 2018. The DPT vide its letter dated 21 July 2018 has responded.

10. Based on the preliminary scrutiny of the proposal dated 13 March 2018, the DPT was requested to furnish information / clarification on a few points vide our letter dated 28 June 2018. This was followed by reminder dated 13 July 2018. The DPT vide its letter dated 21 July 2018 and

subsequent letter dated 18 October 2018 and emails dated 19 November 2018 and 20 November 2018 has responded to the information/ clarifications sought by us. A summary of the information/ clarifications sought by us and the response of DPT is tabulated below:

Sl. No.	Information/ Clarifications sought by us	Response from DPT
I	General:	
(i).	<p>In the first para of the LAC minutes dated 20 January 2016 it is recorded that the LAC recommended that the 2012 valuation (report furnished in 2013) may be returned back to the Valuer for review, particularly considering the differences between Leasehold Land and Freehold Land. Accordingly, the matter was referred by DPT to the valuer vide DPT letter dated 28 December 2015. The LAC minutes states that the valuer has submitted the revised valuations Report on 19 January 2016. There is no further mention of the 2016 valuation report. Moreover, from the LAC minutes it is seen that the valuation done in the year 2012 (report furnished in 2013) is considered by the LAC. A copy of the 2012 valuation report has been furnished by the DPT. The DPT has not furnished a copy of revised valuation report dated 19 January 2016.</p> <p>The DPT to furnish a copy of the Valuation Report, 2016. The DPT to also confirm whether the Land Valuation considered by the LAC appointed by DPT is based on 2012 Valuation Report or 2016 Valuation Report as valuation of Land as per LAC report refers to 2012 Valuation. If the Valuation Report of 2012 is considered, the DPT may examine the relevance of Land Valuation of 2012 for arriving at the rate in the year 2018.</p>	<p>Revised Valuation report dated 19.01.2016 shall be sent shortly. Further, the land valuation considered by LAC is based on Revised Valuation Report of Valuer dated 19.01.2016, with revised rates for the year 2012 and by due escalation, rates for 2016 are arrived at.</p> <p>[Subsequently, DPT vide its letter dated 18 October 2018 has furnished a copy of revised valuation report dated 19 January 2016.]</p> <p>As desired Revised Valuation Report dated 19 January 2016 is furnished. Hence, TAMP is once again requested to kindly approve the proposed modified Scale of Rates for Tuna Port of reply letter No.FA/COST/1021-I/285 dated 21 July 2018, as per Section 48, 49 and 50 of the MPT Act, 1963.</p>
(ii).	<p>DPT has not furnished a copy of Annexure – IV to Minutes of meeting of LAC held on 20 January 2016. Further, Annex I to III referred in the minutes of the LAC are also not attached to the proposal. The DPT to furnish a copy each of Annexures - I to IV to Minutes of meeting of LAC held on 20 January 2016.</p>	<p>Copies of following Annexures – I to IV of the Minutes of the meeting of the LAC held on 20.01.2016 are furnished:</p> <p>Annexure-I: Rates mentioned for village Tuna, Bharapar and Kidana as per Government of Gujarat's ready reckoner.</p> <p>Annexure-II: Highest rate at which Government sold land at Kidana Village.</p> <p>Annexure-III: Market value and lease rent for all four categories adopting same methodology as adopted by the valuer.</p> <p>Annexure-IV: A statement showing the market rate and lease rent as per various factors mentioned in 13 (c) of the amended Land Policy Guidelines, 2014 as on 01.01.2012.</p>
II	Proposed Rental fees for Tuna Port:	
(i).	<p>The proposal of DPT states that the rate proposed for Kutcha Plot is based on the recommendation of the Committee appointed by the DPT to review the rates for Tuna Port and based on approval of the Board of the DPT. Neither in the Committee Report nor in the Report of LAC nor in the minutes of the Board approval, there is mention of ₹84.03 / Sq. Mtr. / annum for Kutcha Plot. The DPT to explicitly give reference of the Committee / LAC recommending the rate of ₹84.03 / Sq. Mtr. / annum for Kutcha Plot</p>	<p>As per the minutes of the LAC held on 20.1.2016, last para of page No. 5 which is reproduced as under:</p> <p>“Considering all above, the LAC after detailed discussions and deliberations recommended to considered the highest rate mentioned by the valuer in valuation report as shown at (ii) on Page 3 above i.e. actual transaction of sale of land by Government at nearby Kidana village during the year 2012, for deriving the rates of</p>

and reference of the Board approval for the same for Kutcha Plot.

Tuna land only for land as and where basis which is mentioned below:

Sl. No.	Particulars	CRZ Zone	Suitable for purpose	Developed/ Undeveloped	High Trade/ Creek area	Valuation	(-) less 25% for leasehold land	Lease rent @ 6% of Final valuation amount (₹ Per Sq. mtr p.a.)
1	*	CRZ-III	Salt production, CISF, Tank farms, Industries, warehouses.	Undeveloped but having approach from 10 km road	Open Undeveloped land	2645	1983.75	119.03
2	**	CRZ-III	Suitable for Warehouse, salt production on CFZ. Tank farms.	Undeveloped	Open land	2300	1725.00	103.50
3	***	CRZ-II	Suitable for Warehouse, CFZ Tank Farms	Undeveloped	High tide area	1955	1466.25	87.98
4	****	CRZ-I	Suitable for Jetty, Logistic operation & CFZ	Undeveloped	High tide area	1725	1293.75	77.63

* Land on East side of approach road leading to Barge handling Jetty at tuna (from NH. No. 8A to tuna in length of 10 kms.

** Land beyond half kilometer from the bank of Creek.

*** Land within half kilometer from the Creek of Barge handling, Jetty having no waterfront.

**** Land having waterfront and upto half kilometer from the Barge handling Jetty i.e. on the North side.

The proposed land allotted to M/s.AKBTPL falls under category 4 i.e. Land having waterfront and upto half kilometer from the Barge handling jetty i.e. on North side and its Lease rent as on 2012 is ₹77.63 per sq. mtr. P.a. and considering 2% escalation, the rate for the year 2016 works out to ₹84.03 per. sq. mtr. p.a.

Further, as per Para 2 on page 2 of the Minutes of the Committee held on 27.11.2016, it has been recommended as "... for Kutchha plots, the rate will be as per latest valuation given by the Valuer for Tuna Port area and approved by the LAC."

Also, the Board of Trustees of DPT vide Resolution No. 109 of the Board meeting held on 26.12.2017 has resolved to approve the Proposal:

(i). "To add a separate tariff rates for the Tuna port as Schedule V of the Scale of Rates of DPT, placed as (Annexure – 60), and to obtain approval from the Tariff Authority for Major Ports under Section 48, 49, and 50 of the MPT Act, 1964;..."

E SCHEDULE V- RENTAL FEES

1. For Open space

(I) Kutchha plots	Rate per 10 Sq. Mtr. Or part thereof Per month or part Thereof (In ₹)	₹84.03 *
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Thus, from the above, it can be construed that

		<p>the rate of ₹84.03 per Sq. mtr. p.a. has been recommended by LAC meeting held on 20.1.2016, by Committee in its meeting held on 27.11.2016 and approved by the Board vide B.R. No. 109 in the Board meeting held on 26.12.2017.</p> <p>[* The rate proposed is ₹84.03 per sq. mtr. p.a. as per the calculation furnished by DPT and not ₹84.03 per 10 sq. mtrs. per month or part thereof.]</p>															
(ii).	Apart from point (i) above, the following rates given in the proposal do not match or could not be correlated:																
(a).	The rate of License fee before Revision of SOR as per 2011 SOR given in the table under Para 13 of the proposal dated 13 March 2018 at ₹9.00 per sq. mtr. p.a. does not match with rate approved in 2011 Order vide Order No.TAMP/61/2009-KPT dated 18.01.2011. The rate prescribed in 2011 Order for Kutcha Plot at Tuna is ₹ 7.50 per 10 sq. mtr. p. a. basis.	<p>The rate for Kutchha plot at Tuna as per rate approved in 2011 Order vide Order No. TAMP/61/2009-KPT dated 18.01.2011 is “₹7.50 per 10 sq. mtr. or part thereof per month or part thereof” and not “₹7.50 per 10 Sq. mtr. or part thereof <u>p.a.</u> or part thereof”.</p> <p>Further, as regards to the rate of License fee before Revision of SOR as per 2011 SOR at “₹9 per sq. mtr. p.a.” under Para 13 of the proposal dated 13.03.2018, it is to state that this rate of “₹9 per Sq. mtr. p.a.” has been worked out on yearly basis considering the rate approved in 2011 Order of “₹7.50 per 10 Sq. mtr. or part thereof <u>per month</u> or part thereof”.</p> <p>(7.50/10* 12 months = 9.00 p.a.)</p>															
(b).	The rate of License fee for Kutcha Plot at Tuna Port as per 2016 SOR indicated in the table under Para 13 of the proposal dated 13 March 2018 of ₹302.40 per sq. mtr. p. a. also does not match with rate approved in 2016 Order vide Order No.TAMP/18/2016-KPT dated 21.06.2016. The rate approved in 2016 Order for Kutcha Plot is slab wise and basis for levy is per 10 sq. mtr. p. a. basis. Please refer the Annex attached.	<p>The rate of License fee for Kutchha plot as per 2016 SOR indicated in the table under para 13 of the Proposal dated 13.03.2018 of “₹302.40 per sq. mtr. p.a.” is also worked out on yearly basis from the Schedule 2.5 License (Storage fees on General cargo (A) For Open space for the period of occupation of Beyond 180 days of “₹252.00 per 10 sq. mtr. or part thereof <u>per month</u> or part thereof”, i.e. 252/10*12 months = ₹302.40 per sq. mtr. p.a.</p>															
(c).	The proposed rates of ₹84.03 per Sq. mtr. p. a. in the said table under Para 13 of the proposal dated 13 March 2018 neither matches with LAC recommendation nor with the rate proposed in SOR. Further, the rate proposed in the table at Para 13 is ₹84.03 per sq. mtr. p.a. whereas in the draft SOR the rate proposed is ₹84.03 per 10 sq. mtr. per day. The DPT is requested to examine and make necessary corrections in line with the correct position.	<p>Please refer clarification furnished vide Para II (i) above. Further, the rate proposed in the table at Para 13 of “₹84.03 per. Sq. mtr. p.a.” may be considered and accordingly modified draft SOR is furnished.</p>															
(iii).	<p>The DPT has stated that for Pucca plots, the rent prescribed in existing SOR of DPT is proposed. The existing SOR of DPT prescribes slab-wise licence (storage) fee for general cargo for storage at Pucca plot. Likewise, slab-wise licence (storage) fee is prescribed for covered space as well as open space as given below:</p> <p>2.5. LICENCE (STORAGE) FEES ON GENERAL CARGO</p> <p>(A). FOR OPEN SPACE:</p> <table border="1"> <thead> <tr> <th>Period of occupation</th> <th>Rate per 10 sq. mtr. or part thereof per month or part thereof</th> </tr> </thead> <tbody> <tr> <td></td> <td>Pucca Plots (cemented asphalted) (in ₹)</td> </tr> </tbody> </table>	Period of occupation	Rate per 10 sq. mtr. or part thereof per month or part thereof		Pucca Plots (cemented asphalted) (in ₹)	<p>Necessary correction have been made in proposed draft SOR by incorporating slab wise License (storage) fee for general cargo for storage at Pucca plot both for Open space and for Covered space. The slab wise rates proposed by DPT in draft SOR are given below:</p> <p style="text-align: right;">(in ₹)</p> <table border="1"> <thead> <tr> <th rowspan="2">Schedule V - Rental fees</th> <th colspan="2">Rate per 10 sq. Mtr. or part thereof per month or part thereof</th> </tr> <tr> <th>Kutchha Plots</th> <th>Pucca Plots</th> </tr> </thead> <tbody> <tr> <td>For open space</td> <td></td> <td></td> </tr> <tr> <td>0 – 60 days</td> <td>23.34</td> <td>144.00</td> </tr> </tbody> </table>	Schedule V - Rental fees	Rate per 10 sq. Mtr. or part thereof per month or part thereof		Kutchha Plots	Pucca Plots	For open space			0 – 60 days	23.34	144.00
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	<p>However, rent proposed by DPT for Tuna port is single rate at ₹432 / 10 sq. mtr. / month adopting the highest rate of the last slab prescribed in the existing SOR of DPT. The proposed rate of DPT for Tuna Port is not found to be in line with the recommendation of the Committee dated 22 November 2016 that the rate applicable for Pucca plot at DPT will apply for Tuna Port. The DPT may examine and, if necessary, make corrections in the proposed rate.</p>	<p>Subsequently, DPT vide its email dated 19 November 2018 has furnished a comparative position of the rate for License (storage) fee applicable for Tuna Port as per 2011 Order, 2016 Order and the rates now proposed by the DPT for Tuna Port.</p> <p>Further, DPT vide its email dated 20 November 2018 has furnished basis for arriving at above proposed rates, which is as follows: The Rate for Kutchha plot as recommended by LAC and as approved by Board of Trustees, DPT, of ₹84.03 per sq mtr p.a. has been converted into rate per 10 sq. mtr per month to ₹70.03, to bring at par with the then existing unit of rate for storage of cargo i.e. Licence fees i.e. ₹84.03 *10/12= ₹70.03 per 10 sq. mtr per month. [₹70.03 per 10 sq. mtr. per month is proposed by DPT for last slab beyond 180 days.] The slab rates proposed for Kutchha plots for different segments of period of stay is proposed on the same analogy as approved for kandla rates i.e. (₹ per 10 sq. mtr. per month or part thereof)</p> <table border="1"> <thead> <tr> <th>Period of occupation</th> <th>Kandla rates</th> <th>Proposed Tuna rates</th> </tr> </thead> <tbody> <tr> <td>0 – 60 days</td> <td>84.00</td> <td>23.34</td> </tr> <tr> <td>61 – 90 days</td> <td>168.00</td> <td>46.68</td> </tr> <tr> <td>91 – 180 days</td> <td>210.00</td> <td>58.35</td> </tr> <tr> <td>Beyond 180 days</td> <td>252.00</td> <td>70.03</td> </tr> </tbody> </table>	Period of occupation	Kandla rates	Proposed Tuna rates	0 – 60 days	84.00	23.34	61 – 90 days	168.00	46.68	91 – 180 days	210.00	58.35	Beyond 180 days	252.00	70.03																	
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(iv)	<p>The terminology prescribed in the existing SOR of DPT is Licence (Storage) fees on general cargo for storage of cargo. The DPT to, therefore, consider to modify the terminology prescribed in the Chapter – V for Tuna Port as “Rental Fees” to “Licence (Storage) fee” to fall in line with the existing prescription in DPT SOR.</p>	<p>The terminology prescribed in the Chapter – V for Tuna Port has been modified in line with the existing prescription in DPT SOR.</p>																																
III.	<p>Scale of Rates:</p>																																	
(i).	<p>The SOR approved by the Authority in 2011 Order prescribed separate Chapter V – prescribing Rate for Tuna Port which also contained a few conditionalities governing the tariff prescribed. In the proposed Chapter – V for separate rate for Tuna Port, the port has not proposed any of those conditionalities. The DPT is requested to examine and give reasons for not proposing the conditionalities governing the levy of separate tariff for Tuna Port prescribed in 2011 Order.</p>	<p>The proposed Chapter – V for separate rate for Tuna Port has been modified by incorporating the conditionalities governing the levy separate tariff for Tuna port. [The conditionalities for Tuna Port proposed to be incorporated by DPT is brought out in the subsequent paragraphs.]</p>																																
(a).	<p>A statement giving comparison of the rates approved for Tuna Port vide Order No.TAMP/61/2009-KPT dated 18.01.2011, rate applicable as per the last SOR revision vide Order No. TAMP/18/2016-KPT dated 21 June 2016 and</p>	<p>It is confirmed that the Annex attached to is in order.</p>																																

	rate now proposed by DPT in its proposal along with percentage increase in rate in 2016 Order and proposed rate in comparison to rate prescribed in 2011 Order is done by us and is attached as Annex. The DPT may go through it and confirm that it is in order.	
(b).	The reasons for proposing reduced rates for Vessel related charges (Port dues, berth hire and beaching charges) and cargo related charges (Wharfage on Animal and Animal products as compared to the Kandla rates to be furnished.	The reason for proposing reduced rates for Vessel related charges (port, dues, berth hire and beaching charges) and cargo related charges (Wharfage on Animal and Animal Products) as compared to the Kandla rates has already been furnished vide Para 7 to 11 of the proposal dated 13.3.2018. [Brought out in para 2.2 (vii) above.]
(ii).	At the joint hearing, the DPT has stated that approximately additional revenue of ₹129.63 lakh is estimated from cargo related and vessel related charges at the proposed rates for Tuna Port. The DPT to indicate what was the revenue from Tuna Port estimated while revising the last SOR of 2016. Furnish the detailed working for the additional income of ₹126.33 lakh indicating the unit rate, traffic, income estimated during 2016 Order and income now estimated at the proposed rate for each of the tariff items. The DPT is requested to confirm that additional annual estimated revenue from the subject proposal is well within the differential ARR ₹700.26 lakhs left uncovered in the last tariff Order and also confirm that the total revenue expected is within total estimated ARR of ₹84,251.84 lakhs.	There is financial implication of reduced rates applicable to Tuna Port of approximately ₹126.53 lakhs and this has been indicated vide Para 14 of the proposal dated 13.03.2018, hence there is no additional revenue from the proposed rates for Tuna port of ₹129.63 lakhs. The revenue estimated from Tuna Port in last revision of SOR 2016 was ₹253.34 lakhs. The statement showing Revenue as per SOR 2011, as per SOR 2016 and as per proposed SOR is furnished. Hence, TAMP is once again requested to kindly approve the proposed modified SOR for Tuna Port, placed as Annexure-I, as per Section 48, 49 & 50 of the MPT Act, 1963.

11. The modified rates for Licence (storage) fees and general notes which are newly inserted as proposed by DPT are given below:

(in ₹)

Schedule V - Rental fees	Rate per 10 sq. mtr. or part thereof per month or part thereof	
	Kutchha Plots	Pucca Plots
For open space		
0 – 60 days	23.34	144.00
61 – 90 days	46.68	288.00
91 – 180 days	58.35	360.00
Beyond 180 days	70.03	432.00
For covered space		
0 – 60 days		279.00
61 – 90 days		558.00
91 – 180 days		697.50
Beyond 180 days		837.00

General Notes:

- (i). Whenever no specific rate is available, the rate prescribed for the corresponding items at Kandla will apply provided the relevant services offered / facilities provided at tuna port are at par with those at Kandla.
- (ii). The terms and conditions of rendering the services at Tuna will be same as prescribed for corresponding services at Kandla provided for comparable services offered / facilities provided.
- (iii). The aggregate amount of bill shall be rounded off to the next higher rupee.

12.1. Subsequent to above, the DPT vide our letter dated 13 December 2018 was requested to furnish further additional information / clarification by 15 December 2018 on following points:

- (i). The proposal of DPT is silent about the effective date of the revised tariff proposed for Tuna Port. The DPT to clarify whether the revised tariff proposed for Tuna port is to be given retrospective effect from the date the last general revision of SOR of DPT came into effect i.e. from 11 August 2016 or prospective effect from the date of effect of the Order to be passed by the Authority on the subject proposal filed by DPT.
- (ii). (a). In the original proposal dated 13 March 2018, the nomenclature of rate proposed for Tuna port at Sr. No.E is "Rental fees" as approved by the Board of Trustees of DPT and as prevailing in the pre-revised SOR approved by the Authority in 2011.

In the light of the clarification furnished by DPT vide its letter dated 11 April 2018 that this item is a cargo related charge i.e., Storage space to be allotted for storage of Cargo and also since port in its revised proposal dated 21 July 2018 has proposed slab wise rate for stay of cargo, the port may examine and clarify whether the nomenclature needs to be modified as "Rental fees for storage of cargo".
- (b). In the existing SOR, under schedule 2.5 - prescribing Licence (Storage) fees for General Cargo for Kandla division, various conditionalities governing the rate are prescribed. The port may examine to include relevant conditionalities for levy of rental fees for storage of cargo for Tuna port as well.

12.2. In response, the DPT vide its letter dated 19 December 2018 have made following submissions:

- (i). With regard to 12.1 (i) above, the issue of the effective date of the revised rate proposed for Tuna Port, the port has stated that the matter has been referred to Indian Ports Association (IPA) and their report is expected shortly. It has, thus, requested to keep the subject case on hold. As soon as report from IPA is received, TAMP shall be informed accordingly.
- (ii). With regard to above 12.1 (ii) (a), the nomenclature of the proposed service may be modified as "License (storage) fee on General Cargo".
- (iii). With regard to above 12.1 (ii) (b), the conditionalities in the existing SOR under schedule 2.5 – "License (Storage) fees on General Cargo" for Kandla division, may be prescribed for storage of cargo for Tuna Port.

12.3. However, since no further response from DPT was received with regard to above para 12.2 (i), it was followed up with DPT by reminders dated 25 January 2019, 07 March 2019 and 01 April 2019.

12.4. In response, the DPT vide its email dated 06 June 2019 has stated that the Board vide Resolution No.22 in its meeting held on 28 May 2019 has approved the effective date of the revised rate proposed for Tuna Port as 11 August 2016 i.e. the effective date of the last General revision of SOR of DPT. A copy of the Board Resolution is furnished by the DPT.

13. 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 them. These details will also be made available at our website <http://tariffauthority.gov.in>.

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

- (i). The proposal filed by the DPT flows from the representation made by concerned users / user association in view of steep hike in the Vessel Related Charges (VRC) and Cargo Related Charges (CRC) including storage charges of Tuna Port in the last General Revision of Scale of Rates (SOR) of Deendayal Port Trust (DPT) approved by this Authority vide Order No.TAMP/18/2016-KPT dated 21 June 2016. During the

revision of the said SOR, DPT had proposed for deletion of separate Schedule of Rates then prevailing for Tuna Port in the SOR of the DPT approved by this Authority vide Order No.TAMP/61/2009-KPT dated 18 January 2011. The port during the revision of 2016 had proposed to apply the rate of Kandla port for Tuna Port by way of prescription of a note under general notes.

The SOR of DPT approved by this Authority vide Order No.TAMP/61/2009-KPT dated 18 January 2011 prescribed vessel related charge, wharfage related charges, rental fees and trolley hire charges separately under Chapter V for Tuna port as then proposed by DPT taking into consideration the type of crafts, nature of cargo being handled, draft requirement etc. at Tuna Port.

During the last general revision of DPT in the year 2016 under the Tariff Policy, 2015, the port had proposed to do away with a separate schedule of rates for Tuna port. Instead, the port proposed to insert a note stating that the tariff applicable for Kandla port is applicable for Tuna Port. With reference to the proposed note during the processing of the proposal of DPT which culminated into Order dated 21 June 2016, DPT was specifically requested to justify whether the services provided at Tuna Port is at par with Kandla division of DPT. In this context, DPT had then justified that Tuna port has been provided with all the infrastructural facilities like road and rail connectivity, etc. and had confirmed that the services, infrastructure, equipment and facilities provided at Tuna are comparable to those rendered at Kandla division. Based on the justification and clarification furnished by the port, the separate schedule of rates for Tuna port then prevailing at Chapter-V was deleted as proposed by DPT and the note proposed by DPT about applicability of Kandla rates to Tuna port was prescribed as a note no.(xv) under General Terms and Conditions No.1.2. The current proposal of the DPT is for reverting back and prescription of separate schedule of rate for Tuna Port based on representation made by few users/ user association.

The submission made by the Adani Kandla Bulk Terminal Private Limited (AKBTPL), the Bulk Terminal Operator at Tuna Port of DPT (governed under the upfront Tariff Guidelines of 2008) that the rate for Tuna Port was inadvertently missed out in SOR approved in 2016 Order is not factually correct. As brought out in the preceding para and for reasons brought out in para 20(xii)(c) of the tariff Order dated 21 June 2016 as proposed by DPT the then Schedule of rate for Tuna Port was done away in the revised SOR and the note no.(xv) under General terms and conditions No.1.2 stating that Kandla rates shall be applicable to Tuna port was prescribed in the SOR of the DPT as proposed by the port.

- (ii). Now, coming to the current proposal of the DPT, based on representations made by Salaya Sailing Vessels Owners' Association (SSVOA) to DPT for review of port charges of Tuna Port, in view of exorbitant increase in port charges for Indian Sailing Vessel at Tuna Port arising due to application of the rates of Kandla division to Tuna Port and also in view of the points made by the AKBTPL about steep hike arising in license fees for Tuna Port as per the SOR approved in Order of June 2016, the DPT has mooted the current proposal for incorporation of a separate tariff schedule of rates for Tuna port as Chapter-V in the existing SOR of DPT. This is following the arrangement prevailing prior to the June 2016 Order in the pre-revised SOR approved by this Authority in the January 2011.

Though the existing SOR of the DPT is valid till 31 March 2019, the DPT has justified its proposal seeking approval of this Authority for separate schedule of rates for Tuna Port in the existing SOR of the DPT citing the following main reasons:

- (a). There has been exorbitant increase to the tune of about 200% in wharfage charges, 150% in Berth Hire Charges and 500% in Port Dues for Tuna Port.
- (b). No expenditure is incurred towards dredging at Tuna by DPT.
- (c). Bare minimum staff is posted at Tuna, as such, the cost of manpower is very less.

- (d). Livestock is handled at Tuna which hardly cause any damage to the wharf etc.
- (e). Livelihood of the village of Tuna, Vandi and other nearby village is dependent upon export of Livestock from Tuna.
- (f). Mechanized craft owners are not so rich and are dependent upon loans from Bank / Financial Institutes.

In view of representation made by relevant user association and AKBTPL, the DPT has constituted a Committee comprising of Traffic Manager, Deputy Conservator, Chief Engineer and Financial Advisor and Chief Accounts Officer for reviewing the SOR of Tuna Port of DPT. The current proposal filed by DPT is based on the recommendation of the Committee constituted by DPT for review of rate for Tuna Port and approval of the Board of Trustees of the DPT.

Thus, in view of the above position brought out by DPT, there is a case to consider the current proposal filed by the DPT for review of rates for Tuna Port in the existing SOR of DPT under the Tariff Policy, 2018 though the existing SOR of DPT is valid till 30 September 2019. It is relevant here to state that recently, this Authority has, based on the proposal of the Mormugao Port Trust (MOPT) and VPT revised the rates for a few items in their respective SOR during the currency of the SOR

A joint hearing in this case was held on 11 June 2018 at the DPT premises. Information / clarification was sought vide our letter dated 28 June 2018 with reference to its proposal giving time upto 05 July 2018. After regular follow up, the port has furnished the requisite information / clarification along with modified draft SOR and conditionalities vide its letters dated 21 July 2018 and subsequent letter dated 18 October 2018 and emails dated 19 November 2018, 20 November 2018, 30 November 2018, 19 December 2018 and 06 June 2019. This case could be processed by this Authority for finalisation only after receipt of complete response from the port which was last received on 06 June 2019.

The proposal of DPT was filed under the Tariff Policy, 2015 and the entire processing was done under the said Tariff Policy, 2015 which was valid till issue of new Tariff Policy, 2018 made effective from 26 December 2018. The broad framework of Tariff Policy, 2018 issued by the MOS is same as Tariff Policy, 2015 except few minor amendments. Since the Tariff Policy, 2015 is superseded by Tariff Policy, 2018 with effect from 26 December 2018, this case is finalized by this Authority under Tariff Policy, 2018.

- (iii). Before proceeding to analysis of this case, it is relevant here to state that for arriving at the proposed rate of License (storage) fee for Kutchha plot, the port has followed the different methods prescribed in the amended Land Policy Guidelines (LPG) 2014 for valuation of land.

In this regard, the DPT has clarified that only for determining the rate for Kutchha plot, reliance was made by the port on land valuation given by approved valuer and approved by LAC. The port has categorically stated that proposal for revision of License (Storage) fee for Kutchha plot of Tuna port is covered under CRC. The port allots storage space for storage of Cargo and charges shall be levied on the basis of stay of cargo. The port has categorically stated that it is not allotment of land for Lease and License basis as per amended LPG, 2014 and hence proposed Storage charges for Kutchha plot at Tuna are not covered under amended LPG, 2014. The port has emphasised that the rate sought for Kutchha plot is covered under the General revision of SOR following the principles of Tariff Guidelines, 2015 which is revised to Tariff Policy, 2018.

As regards objection raised by AKBTPL that the proposal of DPT is untenable, unreasonable, bad in law and unjustified as it is clubbing two guidelines Tariff Policy 2015 and LPG, 2014 for an existing project during the currency of License, the port has reiterated that there is no clubbing of two guidelines i.e. Tariff policy 2015 and LPG, 2014. The AKBTPL has also objected on the valuation of land considered by

DPT to arrive at proposed License (Storage) fee. The port has categorically stated that the current proposal has been framed within the ambit of Tariff Policy, 2015 only which has been revised to Tariff Policy, 2018 keeping the same framework. While proposing the License (Storage) fee for Kutchha plot of Tuna port, only for determining the rates, reliance has been made by the Committee constituted by the port to review the rates for land at Tuna Port on latest valuation given by the Valuer for Tuna port area and approved by the LAC. These rates are covered under Cargo Related Services of the General revision of SOR following the principles of Tariff Policy, 2015 and hence as such in proposing the above rates, DPT has not applied LPG, 2014. The port further clarified that current proposal is outside the ambit of LPG, 2014 and has no relevance with the same.

In the revised proposal dated 21 July 2018, the DPT has proposed slab wise License (Storage) fee for stay of cargo of 0-60 days, 61-90 days, 91-180 days and beyond 180 days. The revised rate proposed by DPT strengthens argument of DPT that the rates for License (Storage) fee linked to duration of stay of cargo is proposed under Cargo Related Services as part of general revision of SOR. In view of the above position and keeping in view the clarification and justification furnished by the DPT, this Authority considered the entire proposal of DPT under Tariff Policy, 2018. The Tariff Policy, 2015 and the revised Tariff Policy, 2018 already give flexibility to the Port Trust to propose rates in the Scale of Rates within the ARR.

- (iv). (a). The Schedule of Rates for Tuna Port proposed by DPT is based on the recommendation of Committee constituted by the port.
- (b). The Committee has recommended the VRC i.e. Port dues, Berth hire charges, Beaching charges for Tuna Port taking the pre-revised rates prescribed for Tuna Port in the general SOR of the DPT approved by this Authority in Order dated 18 January 2011 as the base and applying WPI escalation of 30.35% from 2011 to 2016. Tariff Policy, 2018 gives flexibility to Major Port Trusts to propose SOR within the ARR.

A comparative statement showing the rates applicable for Tuna Port as per the pre-revised Order of 2011 (Order No.TAMP/61/2009-KPT dated 18 January 2011), Order of June 2016 (Order No.TAMP/18/2016-KPT dated 21 June 2016), and the rates now proposed by the DPT for Tuna Port alongwith percentage increase arising in 2016 Order on account of applicability of DPT rate to Tuna Port, percentage increase/ decrease at the proposed separate rate for Tuna Port as against the rates applicable as per the tariff Order of 2016 and percentage increase / decrease over the then prevailing rate as per the 2011 Order is attached as **Annex**.

It can be seen from the comparative statement attached at Annex (Column no.10) that as rightly stated by SSVOA, the prescription of the note to apply Kandla rates to Tuna port in the tariff Order of 2016 led to steep increase in VRC i.e. 901% to 1069% increase in port dues, 667% increase in Berth Hire charges and 769% increase in Beaching charges.

The revised proposed rate is arrived by the DPT applying 30.35% WPI , increase over the then prevailing rates of 2011 which were applicable till 10 August 2016 till the revised SOR was made effective from 11 August 2016. At revised proposed rate in the VRC, the increase over the 2011 Order rate works out to be 30.33% to 30.37%. The proposed rate shows 83% to 87% reduction over the rates applicable as per the tariff Order of 2016.

In the instant proposal, recognising that the revised VRC proposed by DPT for Tuna Port is based on recommendation of the Committee and approved by the Board flowing from representation made by relevant association to DPT about steep hike arising for Tuna Port by applying the rates of Kandla Port, this Authority is inclined to approve the revised rate proposed by DPT for Tuna Port. Since the proposal is for reduction in the existing rate, the revenue at the revised proposed rate is not expected to exceed the ARR estimated in the last tariff revision of 2016 Order.

The SOR of DPT approved in 2011 did not prescribe rate for anchorage charges for Tuna Port. The port has now proposed to prescribe anchorage charge for Tuna Port at par with the existing rate at Inner anchorage for Kandla Division approved in the Tariff Order of 2016 applicable. The proposed rates are approved.

- (c). The increase in wharfage (CRC) at the rates applicable as per tariff Order of 2016 over the pre-revised rate is in the range of 20% to 233% for most of the cargo items and 456% for POL products.

As regards CRC, the said Committee constituted by the DPT held that port has invested considerable amount on creation of infrastructural facilities at Tuna port such as roads, berth, barge jetty, backup area, lighting, etc. Hence, reducing the CRC is not found appropriate by the Committee. However, in view of request by M/s.SSVOA, wharfage rate for livestock is proposed for reduction from the existing rates applicable as per Order of 2016. The proposal of DPT states that revised rate for livestock viz. Animals including chicken, sheep & goats, Animals (other than Animals including chicken, sheep & goats) and Animal products, bone meal, hides & skin is arrived applying WPI escalation of 30.35% over the wharfage rates approved in 2011 Order based on the recommendation of the Committee. The increase in wharfage rate works out to 30.33%, 30.42% and 30.44% for the above livestock categories respectively over the pre-revised rates of 2011 Order. As compared to existing rates applicable as per 2016 Order, the revised wharfage rates proposed by DPT results in 56.56% reduction in the wharfage rate for Animals including chicken, sheep & goats, 47.83% reduction for Animals (other than Animals including chicken, sheep & goats) and 34.78% for Animal products, bone meal, hides & skin. For other items, the DPT has proposed to retain the wharfage rate as presently applicable as per 2016 Order.

The DPT proposed to include separate wharfage schedule for Tuna port as prevailed in SOR approved by this Authority in 2011. Recognising that the proposal of DPT is based on recommendation of the Committee and approved by the Board of Trustees of DPT, the proposed wharfage schedule for Tuna port is approved as proposed by DPT. Since the proposal is for reduction in the existing wharfage rate for 3 items, the revenue at the revised proposed rate is not expected to exceed the ARR estimated in the last tariff revision of Order of 2016.

- (d). The existing SOR approved in 2016 do not prescribe any tariff for storage of timber on board and for trolley hire charges. The pre-revised SOR approved in 2011 prescribed rate for trolley charges at ₹15 per day and ₹1.5 per 10 sq. mtr. per day for storage of timber on board for Tuna port. The rate proposed in current proposal at ₹19.55 per day and ₹1.96 per 10 sq. mtr. per day for the said two items respectively are arrived by the DPT applying 30.35% WPI, increase over the then prevailing rates of 2011 as done for revised VRC for Tuna port. The proposed rates are for miscellaneous services and may not have any significant impact. Hence, the proposed rate for these two items are approved.
- (e). The SOR approved in the tariff Order of 2011 prescribed rental for open space at ₹7.50 per 10 sq. mtr. per month or part thereof (i.e. ₹9.00 per sq. mtr. Per annum [i.e. ₹7.50 / 10 sq. mtr. * 12 months]). For covered space, the rate prescribed in 2011 Order is ₹48 per 10 sq. mtr. per month or part thereof i.e. 57.60 per sq. mtr. p.a. (i.e. ₹48 / 10 sq. mtr. * 12 months).

Applicability of the Licence (Storage) fees as per Kandla division to Tuna Port in the SOR approved in the tariff Order of 2016 based on the proposal of DPT led to steep increase of 1020% to 3260% for Kutchha plots in open space, 1820% to 5660% for Pucca plots in open space and 481% to 1644% for covered space.

In the earlier SOR of 2011, the License (Storage) fee for Tuna port was prescribed as a single rate for each of Open Space and Covered Space as stated earlier as the proposed by DPT.

The DPT has, based on recommendation of Committee, originally proposed Licence (Storage) fees for open area by bifurcating into two categories viz. Kutchha plots and Pucca plots. The Licence (Storage) fees for Pucca plots under open space and for covered space are proposed by the DPT slab wise at par with the Licence (Storage) fees prescribed in the existing SOR of DPT at schedule 2.5 in the tariff Order of 2016.

As regards Kutchha plots, the DPT had earlier proposed rate of ₹84.03 per sq. mtr. or part thereof per annum. This works out to ₹70.03 per 10 sq. mtr. per month (₹84.03 /12 months * 10 sq. mtr.). Subsequently, the DPT has proposed slab wise rate and unit of levy is proposed on per 10 sq. mtr. per month or part thereof basis as applicable for Kandla. The rate proposed by DPT for the first slab is ₹23.34 per 10 sq. mtr. per month or part thereof for 0-60 days, ₹46.68 per 10 sq. mtr. per month or part thereof for 61-90 days, ₹58.35 per 10 sq. mtr. per month or part thereof for 91-180 days and ₹70.03 per 10 sq. mtr. per month or part thereof beyond 180 days. The slab wise structure proposed by DPT for Kutchha plots for different segments of period of stay is on the same analogy as approved by this Authority for Kandla Division.

At the proposed rates, there is reduction in rates for Kutchha plots for Open Space by 72.21% for each of the slabs as against the rate applicable as per the 2016 Order. The rates proposed for Pucca plots in Open Space and for Covered Space are proposed to be prescribed at par with rates of Kandla. Recognising that the proposal of the DPT is based on the recommendation of the Committee appointed by DPT to review the rates for Tuna port and has been approved by the Board of Trustees of DPT, the revised Licence (Storage) fees proposed for Tuna port is approved.

The port has subsequently requested to prescribe the nomenclature as Licence (Storage) fees for general cargo. Since the charges are for storage of cargo, it may suffice if the nomenclature is mentioned as "Storage charges for general cargo".

As per Clause 2.6 of Tariff Policy 2015, the Major Port Trusts have the flexibility to determine the rates to respond to the market forces based on commercial judgment and draw the SOR within the ceiling of indexed ARR. In the last revision of the SOR of DPT approved vide Order No.TAMP/18/2016-KPT dated 21 June 2016, the ARR estimated by this Authority is ₹84,251.84 lakhs per annum and the revenue estimated by DPT at the SOR then proposed and approved in the said Order was ₹83,551.58 lakhs. The differential of ₹700.26 lakhs (₹84,251.84 lakhs less ₹83,551.58 lakhs) was left uncovered by this Authority which the port was allowed to take care from the tariff items and conditionalities for which the DPT could not capture the revenue impact at that point of time.

The port has estimated reduction in revenue to the tune of ₹129.53 lakhs per annum on account of proposed reduction in VRC and wharfage charges of few items at the proposed rates for Tuna Port.

As regards Storage charges, the port has clarified that no financial implication to ARR is estimated as same has not been considered in ARR, as per Tariff Policy, 2015. Working Guidelines issued by TAMP, require Major Port Trusts to estimate revenue for each of the tariff items in the proposed SOR. Hence, the point made by DPT that Tariff Policy, 2015 does not require to estimate revenue from Storage charges is not correct. In this regard, it is to state that, in the last tariff revision Order of 2016 under Tariff Policy 2015, the revenue

estimated by the DPT at the proposed SOR includes revenue estimate from Storage charges at ₹24.11 lakhs. The revenue estimated by DPT does not show separate estimate for Storage charges for Kandla port and for Tuna port. Now, the port has proposed to retain the Storage charges as in 2016 Order for Pucca plot for Open Space and for Covered Space. Hence, there may not be any revenue impact. As regards, Storage charges for Open Space for Kutchha plots, the DPT has proposed reduction in the rate from the rate applicable as per 2016 Order. Hence, in this scenario, the revenue estimated in tariff Order of 2016 which included Storage charges is likely to reduce and not increase. Recognising that the Major Port Trusts have the flexibility to determine the rates to respond to the market forces based on commercial judgment and draw the SOR within the ceiling of indexed ARR, the revised Storage charges proposed by the DPT are approved.

- (f). Thus, to summarise the proposal of the DPT for insertion of separate Schedule of rate for Tuna port as Chapter-V is approved as proposed by the DPT. Consequent to above, the existing Chapter-V relating to tariff for Marine related services provided by DPT at Dry bulk terminal commissioned by AKBTPPL at Tuna / Tekra is renumbered as Chapter-VA as proposed by DPT.

In view of the approval accorded to the proposal of the DPT, the existing note No.(xv) prescribed under General terms and conditions in the existing SOR is found to be infructuous and hence deleted.

- (v). One of the points made by AKBTPPL is that LPG, 2014 is applicable only for allotment of fresh land leases and / or at the time of renewal of expired leases whereas land allotted to them at Tuna port is not fresh allotment of lease, hence, valuation exercise done by DPT does not apply. The AKBTPPL has also stated that the valuation report takes clue from land deals done in villages of Kidana & Bharapar, which are more than 14-18 kms away from the area of AKBTPPL and completely ignores the nearby villages of Tuna & Vandri. In this context, as stated earlier, DPT has categorically stated that revision in Storage charges for Tuna port is not under LPG, 2014 but under Tariff Policy, 2015. Only for arriving at the rate for Kutchha plot for Tuna port, DPT has relied on land valuation given by approved valuer. The Tariff Policy, 2015 and the Tariff Policy, 2018 effective from 26 December 2018 gives this flexibility to Major Port Trusts to draw the SOR within the ARR. In the last revision of SOR under Tariff Policy, 2015 the ARR estimated by this Authority is ₹84,251.84 lakhs per annum and the revenue estimated by DPT at the SOR then proposed and approved in the said Order was ₹83,551.58 lakhs. The differential of ₹700.26 lakhs (₹84,251.84 lakhs less ₹83,551.58 lakhs) was left uncovered by this Authority which the port was allowed to take care from the tariff items and conditionalities for which the DPT could not capture the revenue impact at that point of time. As stated earlier revenue from the proposed tariff item is within the ARR estimated in the Tariff Order of 2016.
- (vi). The port has proposed notes stating that whenever no specific rate is available, the rate prescribed for the corresponding items at Kandla will apply to Tuna port provided the relevant services offered / facilities provided at Tuna port are at par with those at Kandla. The another note proposed by the DPT is that the terms and conditions of rendering the services at Tuna will be same as prescribed for corresponding services at Kandla provided for comparable services offered / facilities provided. The proposed notes are as prescribed for Tuna Port in the SOR approved by this Authority in 2011 Order and hence approved to be included in the existing SOR while prescribing separate Chapter for rates of Tuna Port.
- (vii). (a). The AKBTPPL has objected the Storage charges proposed by the DPT. The AKBTPPL has opposed the Land Valuation Report considered as the basis of determination of land rates of Tuna. The AKBTPPL has viewed that market Value of Land Rates which are considered is Industrial developed Land which is not in Tuna village but in Bhrapar & Kidana which is located behind Kandla Special Economic Zone and around 14-18 Km away from Tuna Terminal. As already stated, the port has clarified that in the present proposal, for proposing the Storage charges for Kutchha plot of Tuna port,

only for determining the rates, reliance has been made on latest valuation given by the Valuer for Tuna port and approved by the LAC. These rates are covered under Cargo related services of the General revision of SOR following the principles of Tariff Policy, 2015 and hence the DPT has clarified that in proposing the Storage charges for Kutchha plot, it has not applied LPG, 2014. This clarification given by DPT is accepted. The Tariff Policy, 2015 under which this proposal is filed and the subsequent Tariff Policy, 2018 in place of Tariff Policy, 2015 gives flexibility to Major Port Trust to draw SOR within the estimated ceiling ARR. As stated earlier, at the proposed rates for Kutchha plot, there will be reduction of 72.21% from the rates applicable as per the existing SOR approved by this Authority in 2016 Order and hence revenue estimate is within the citing ARR.

- (b). The AKBTPL has signed Concession Agreement (CA) with the DPT for operating Bulk Cargo terminal on 26 June 2012 for a period of 30 years. As per Article 9.1 (a) of the CA, Licence fees payable by AKBTPL is ₹81,23,400 for land (i.e. 9,02,600 sq. mtrs. X ₹0.75 X 12 months). The CA stipulates that the amount of Licence fees for land shall be calculated as per prevailing SOR set by TAMP from time to time. The AKBTPL has stated that Licence fee of ₹81.23 lakhs in CA is applying the Licence (Storage) fees of 7.50 per 10 sq. mtrs. / month) as per then prevailing rate for Tuna port. The AKBTPL has viewed that any rise in Licence (Storage) fees for land allotted for the Public Private Partnership (PPP) project of AKBTPL can either be at 60% of WPI indexation or at 2% as provided in LPG, 2014 on the base Licence (Storage) fees as mentioned in Article 9.1 (a) of the Concession Agreement. The AKBTPL has requested this Authority to give guidelines to DPT and to AKBTPL on issues arising from the notification of upfront tariff Order No.TAMP/42/2009-KPT dated 17 August 2010 relating to upfront tariff approved by this Authority for the Dry Bulk Terminal off Tekra near Tuna at Port of Kandla to be developed under PPP mode at DPT.

With reference to above points made by AKBTPL, it is to state that the reasons and the basis of considering ₹7.50 per 10 sq. mtr. per month as applicable for Tariff Policy, 2015 for estimating Licence (Storage) fees for upfront tariff approved by this Authority vide Order No.TAMP/42/2009-KPT dated 17 August 2010 is elaborately dealt with in para 11 (viii) (c) of the said Order. The current proposal before this Authority is to approve rates for Tuna Port under a separate Chapter as per the arrangement prevailing prior to the existing SOR approved in June 2016. This Authority is to approve rate for services at Tuna port provided by DPT for the use of property and on common user basis and not restricted for any individual user/ BOT operator operating at Tuna port. The matter referred by AKBTPL appears to flow from the CA entered between the DPT with the individual BOT operator i.e. AKBTPL. This Authority does not like to interfere in the matter arising from individual Concession Agreements entered by the concerned Port Trust with the individual operator / lessees as it is beyond the mandate of this Authority.

This Authority likes to make it abundantly clear that the Bulk Terminal Project awarded by the DPT to the AKBTPL is based on the upfront tariff fixed by this Authority Order No.TAMP/42/2009-KPT dated 17 August 2010 under the Upfront Tariff Guidelines of 2008. The DPT and AKBTPL are governed by the said Upfront Tariff approved by this Authority following the Upfront Tariff Guidelines of 2008 issued by the MOS. As per clause 2.8. of the upfront tariff fixation guidelines of 2008 and para 11.1 of the said Order, the tariff fixed upfront are subject to only annual indexation to the extent of 60% of the variation in WPI. The 2008 Guidelines do not provide for enhancement of upfront tariff prescribed for the PPP projects whenever revised lease rentals are notified. The upfront tariff approved by this Authority, however, shall qualify for annual indexation to the extent of 60% of the variation in WPI as per clause 2.8 of the upfront tariff guidelines of 2008 to meet inflation.

It is also relevant here to state that a Committee constituted by MOS under Indian Ports Association (IPA) has given the report on stressed project

evolving a mechanism to all the Major Port Trusts to bring out such stressed projects. The said IPA Committee Report issued by the MOS to all Major Port Trusts also includes other issues. One of the issues dealt in the IPA report relates to License fee provisions in the CA. The DPT and AKBTPL may, therefore, like to explore the possibility of resolving this matter based on the recommendations contained in the said report.

- (c). As regards the request made by AKBTPL requiring this Authority to issue suitable direction to DPT for devising new escalation methodology for escalating the Licence (Storage) fees for Tuna Dry Bulk Terminal at 60% of WPI as applicable to PPP project of as per amended LPG, 2014, it is to state that issuing direction to DPT for devising new escalation methodology for escalating the Licence (Storage) fees for Tuna Dry Bulk Terminal for arriving at rate is beyond the mandate of this Authority. Annual escalation factor applicable / methodology for annual tariff escalation on the tariff being approved by this Authority is already prescribed in the relevant guidelines applicable to the Major port Trusts / BOT operators. The Major Port Trusts / BOT operators and this Authority are governed by same.
- (viii). As regards conditionalities governing the proposed rate, the DPT has sought prescription of the conditionalities as prescribed in schedule 2.5 for Kandla division. That being so, the same are incorporated in the schedule of Storage charges for Tuna Port.
- (ix). Ordinarily the rate approved by this Authority shall come into force after expiry of 30 days from the date of notification of the Scale of Rates in the Gazette of India. However, the Board of Trustees of DPT vide Resolution No.22 in its meeting held on 28 May 2019 has resolved to give effect to the separate tariff for Tuna Port retrospectively with effect from 11 August 2016 i.e. the effective date of the last General revision of SOR of DPT, the separate tariff approved by this Authority shall be made effective from 11 August 2016 and included in the existing SOR of DPT which is valid till 30 September 2019.

15.1 In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the following rates for Tuna port in the existing SOR of DPT:

- (i). **Insert the following as Chapter V – Rate for Tuna Port in the existing Scale of Rates of DPT:**

“CHAPTER V - RATE FOR TUNA PORT

Sr. No.	Particulars	Unit of levy	Foreign Going Vessel (in US \$)	Coastal Vessel (in ₹)
A.	Schedule 1 - Port Dues			
1	Vessels of 10 GRT & Upwards (except fishing boats)	Rate per GRT or part thereof	0.0978	1.3687
2	Sailing Vessels of 10 GRT & Upwards (except fishing boats)	Rate per GRT or part thereof	0.0587	1.1732
B.	Schedule II - Berth Hire Charges			
1	Vessels above 10 GRT	Rate per GRT per hour or part thereof	0.0025	0.0391
C.	Schedule III - Beaching Charges			
1	Beaching Charges	Rate per NRT per MTH or part thereof	0.0196	0.3911
D.	Anchorage Charges			
	Sea going mechanically propelled vessels	--	--	--
	Inner Anchorage (per GRT)	Rate per 1 hour or part thereof	0.0010	0.0255

			Foreign Going Vessel (in ₹)	Coastal Vessel (in ₹)
E.	Schedule IV - Wharfage charges			
I.	Liquid (in bulk)			
1	POL products in bulk other than crude oil	M.T. Or part thereof	50.00	50.00
2	Other liquid cargo including bunkers	M.T. Or part thereof	50.00	30.00
II.	Dry Cargoes			
1	Fertilizer and raw material including sulphur	M.T. Or part thereof	33.60	20.16
2	Foodgrains, cereals, pulses and oilseeds	M.T. Or part thereof		
	(i). Bulk		15.00	9.00
	(ii). Break Bulk		9.00	5.40
3	Cement and clinker	M.T. Or part thereof	22.50	13.50
4	Ores and minerals (in all forms)	M.T. Or part thereof	16.88	10.13
5	Granites and marbles	M.T. Or part thereof	22.50	13.50
6	Metals (Ferrous/non-ferrous & metals scrap including pipes, pig iron, coil sheet & cokes.	M.T. Or part thereof	37.50	22.50
7	Animals including chicken, sheep & goats	Each	6.52	3.91
8	Animals (other than above)	Each	15.64	9.39
9	Animal products, bone meal, hides and skin	M.T. Or part thereof	9.78	5.87
10	Oil cakes and fodder	M.T. Or part thereof	15.00	9.00
11	Waste paper and newsprint	M.T. Or part thereof	30.00	18.00
12	Construction material and sand	M.T. Or part thereof	16.88	10.13
13	Coal and coke (including firewood)	M.T. Or part thereof	25.20	15.12
14	Wood, timber and bamboo	Cu. M.	30.00	18.00
15	Jute & jute products and coir products	M.T. Or part thereof	22.50	13.50
16	Cotton including cotton waste	M.T. Or part thereof	22.50	13.50
17	Salt	M.T. Or part thereof	15.00	9.00
18	Sugar	M.T. Or part thereof	15.00	9.00
19	Asbestos	M.T. Or part thereof	-	-
20	Synthetic resin and wood pulp	M.T. Or part thereof	45.00	27.00
21	Arms, ammunition, explosives and defence stores	M.T. Or part thereof	97.50	58.50
22	Dry chemicals including soda ash, HDPE, etc.	M.T. Or part thereof	22.50	13.50
23	Other unspecified goods	M.T. Or part thereof	52.50	31.50
F.	Schedule V – Storage charges for general cargo			
1	For open space	Rate per 10	Kutchha	Pucca

		sq. mtr. or part thereof per month or part thereof (in ₹)	Plots	Plots
	0 – 60 days		23.34	144.00
	61 – 90 days		46.68	288.00
	91 – 180 days		58.35	360.00
	Beyond 180 days		70.03	432.00
2	For covered space			
	0 – 60 days			279.00
	61 – 90 days			558.00
	91 – 180 days			697.50
	Beyond 180 days			837.00
3	Storage of timber on board	Rate per 10 sq. mtr. or part thereof per day or part thereof (in ₹)		1.96
G.	Schedule VI - Trolley Hire Charges	Rate per day or part thereof (in ₹)		19.55

General Notes:

- (i). Whenever no specific rate is available, the rate prescribed for the corresponding items at Kandla will apply provided the relevant services offered / facilities provided at tuna port are at par with those at Kandla.
- (ii). The terms and conditions of rendering the services at Tuna will be same as prescribed for corresponding services at Kandla provided for comparable services offered / facilities provided and are as given below:
 - (a). Period for the purpose of calculation of Storage charges shall be counted taking into account the period of stay of the cargo, both for open and covered areas.
 - (b). Application for storage spaces shall be made before storage of goods to the DPT or its authorised official. Any unauthorised occupation of storage spaces shall be liable for payment of double the rent, as a penalty.
 - (c). Storage charges shall be paid in advance. Penal interest, as prescribed in point no. (viii) in 1.2. General Terms and Conditions in Chapter I shall be levied on the amount due but not paid from the date on which the amount becomes due till the date of actual payment which shall in no case exceed 7 days. If, for any reason, payment is delayed beyond 7 days from the date of the amount becoming due occupation will be treated as unauthorised.
 - (d). The space allotted shall be vacated on notice from the DPT or its authorised official failing which it will be treated as unauthorised occupation; and, the Port Authorities shall take other action, as deemed fit.
 - (e). The DPT shall have the right to take over the spaces, allotted on rental basis, which are unoccupied/empty without any prior notice in the interest of the Port operation. In such cases, proportionate reduction in rent shall be allowed.
 - (f). The day for the purpose of levy of storage charges will be from 08.00 hrs to 08.00 hrs.
 - (g). If operational area is leased on rental to users, storage charges on containers/demurrage on cargo stored therein shall not be levied again.

- (iii). The aggregate amount of bill shall be rounded off to the next higher rupee. ”
- (ii). **Renumber the existing Chapter-V - Tariff for Marine related services provided by DPT at Dry bulk terminal commissioned by AKBTPL at Tuna / Tekra' in the existing SOR of DPT as Chapter-VA**
- (iii). Delete the note no.(xv) prescribed in the existing SOR of DPT under Chapter I - Definitions and General Terms and Condition.

15.2 The DPT is advised to suitably incorporate the above provision in its SOR.

15.3. The said charges shall be effective from 11 August 2016 as proposed by DPT and its validity is made co-terminus to the validity of the existing SOR of DPT i.e. upto 30 September 2019. The approval accorded shall automatically lapse unless, specifically extended by this Authority.

(T.S. Balasubramanian)
Member (Finance)

A comparative position of the rate for Tuna Port as per 2011 Order, 2016 Order and the rates now proposed by the DPT for Tuna Port alongwith percentage increase / decrease with reference to 2016 rates and 2011 rates											
Sr. No.	Particulars	Unit	Rates as approved in 2011 Order (Order No. TAMP/61/2009-KPT dated 18.01.2011)		Rates as per the Tariff Order of 2016 (Order No. TAMP/18/2016-KPT dated 21.06.2016) *		Rate now proposed by DPT vide proposal dated 13.03.2018		% increase / (decrease) at 2016 (i.e existing) rates w.r.t. 2011 rates	% increase / (decrease) at proposed rate w.r.t. 2011 rates	% increase / (decrease) at proposed rate w.r.t. 2016 (i.e existing) rates
			Foreign Going Vessel (in US \$)	Coastal Vessel (in ₹)	Foreign Going Vessel (in US \$)	Coastal Vessel (in ₹)	Foreign Going Vessel (in US \$)	Coastal Vessel (in ₹)	Coastal Vessel	Coastal Vessel	Coastal Vessel
1	2	3	4	5	6	7	8	9	10=(7-5)/5	11=(9-5)/5	12=(9-7)/7
A. Schedule I - Port Dues											
1	Vessels of 10 GRT & Upwards (except fishing boats)	Rate per GRT or part thereof	0.0750	1.0500	0.4255	10.5175	0.0978	1.3687	901.67%	30.35%	-86.99%
2	Sailing Vessels of 10 GRT & Upwards (except fishing boats)	Rate per GRT or part thereof	0.0450	0.9000	0.4255	10.5175	0.0587	1.1732	1068.61%	30.36%	-88.85%
B. Schedule II - Berth Hire Charges											
1	Vessels upto 10 GRT	Rate per GRT per hour or part thereof	Free	Free							
2	Vessels above 10 GRT	Rate per GRT per hour or part thereof	0.0019	0.03	0.0092	0.23	0.0025	0.0391	666.67%	30.33%	-83.00%
C. Schedule III - Beaching Charges											
1	Beaching Charges	Rate per NRT per MTH or part thereof	0.015	0.3	0.105	2.6066	0.0196	0.3911	768.87%	30.37%	-85.00%
Anchorage Charges											
Sea going mechanically propelled vessels											
	Inner Anchorage (per GRT)	Rate per 1 hour or part thereof	-	-	0.001	0.0255	0.001	0.0255	-	-	0.00%
D. Schedule IV - Wharfage charges											
A. Liquid (in bulk)											
1	POL products in bulk other than crude oil	M.T. Or part thereof	15.00	9.00	50.00	50.00	50.00	50.00	455.56%	455.56%	0.00%
2	Other liquid cargo including bunkers	M.T. Or part thereof	15.00	9.00	50.00	30.00	50.00	30.00	233.33%	233.33%	0.00%
B. Dry Cargoes											
1	Fertilizer and raw material including sulphur	M.T. Or part thereof	15.00	9.00	33.60	20.16	33.60	20.16	124.00%	124.00%	0.00%
2	Foodgrains, cereals, pulses and oilseeds	M.T. Or part thereof									
	(i). Bulk		7.50	4.50	15.00	9.00	15.00	9.00	100.00%	100.00%	0.00%
	(ii). Break Bulk				9.00	5.40	9.00	5.40	20.00%	20.00%	0.00%
3	Cement and clinker	M.T. Or part thereof	12.00	7.20	22.50	13.50	22.50	13.50	87.50%	87.50%	0.00%
4	Ores and minerals (in all forms)	M.T. Or part thereof	11.25	6.75	16.88	10.13	16.88	10.13	50.07%	50.07%	0.00%
5	Granites and marbles	M.T. Or part thereof	15.00	9.00	22.50	13.50	22.50	13.50	50.00%	50.00%	0.00%
6	Metals (Ferrous/non-ferrous & metals scrap including pipes, pig iron, coil sheet & cokes.	M.T. Or part thereof	15.00	9.00	37.50	22.50	37.50	22.50	150.00%	150.00%	0.00%
7	Animals including chicken, sheep & goats	Each	5.00	3.00	15.00	9.00	6.52	3.91	200.00%	30.33%	-56.56%
8	Animals (other than above)	Each	12.00	7.20	30.00	18.00	15.64	9.39	150.00%	30.42%	-47.83%
9	Animal products, bone meal, hidens and skin	M.T. Or part thereof	7.50	4.50	15.00	9.00	9.78	5.87	100.00%	30.44%	-34.78%
10	Oil cakes and fodder	M.T. Or part thereof	7.50	4.50	15.00	9.00	15.00	9.00	100.00%	100.00%	0.00%
11	Waste paper and newsprint	M.T. Or part thereof	13.50	8.10	30.00	18.00	30.00	18.00	122.22%	122.22%	0.00%
12	Construction material and sand	M.T. Or part thereof	11.25	6.75	16.88	10.13	16.88	10.13	50.07%	50.07%	0.00%
13	Coal and coke (including firewood)	M.T. Or part thereof	12.00	7.20	25.20	15.12	25.20	15.12	110.00%	110.00%	0.00%
14	Wood, timber and bamboo	M.T. Or part thereof	10.50	6.30	30.00	18.00	30.00	18.00	185.71%	185.71%	0.00%
15	Jute & jute products and coir products	M.T. Or part thereof	10.50	6.30	22.50	13.50	22.50	13.50	114.29%	114.29%	0.00%
16	Cotton including cotton waste	M.T. Or part thereof	9.00	5.40	22.50	13.50	22.50	13.50	150.00%	150.00%	0.00%
17	Salt	M.T. Or part thereof	2.50	1.50	15.00	9.00	15.00	9.00	500.00%	500.00%	0.00%
18	Sugar	M.T. Or part thereof	7.50	4.50	15.00	9.00	15.00	9.00	100.00%	100.00%	0.00%
19	Asbestos	M.T. Or part thereof	9.00	4.50	-	-	-	-	-	-	-
20	Synthetic resin and wood pulp	M.T. Or part thereof	15.00	9.00	45.00	27.00	45.00	27.00	200.00%	200.00%	0.00%
21	Arms, ammunition, explosives and defence stores	M.T. Or part thereof	18.00	10.80	97.50	58.50	97.50	58.50	441.67%	441.67%	0.00%
22	Dry chemicals including soda ash, HDPE, etc.	M.T. Or part thereof	10.50	6.30	22.50	13.50	22.50	13.50	114.29%	114.29%	0.00%
23	Other unspecified goods	M.T. Or part thereof	15.00	9.00	52.50	31.50	52.50	31.50	250.00%	250.00%	0.00%

A comparative position of the rate for Tuna Port as per 2011 Order, 2016 Order and the rates now proposed by the DPT for Tuna Port alongwith percentage increase / decrease with reference to 2016 rates and 2011 rates

Sr. No.	Particulars	Unit	Rates as approved in 2011 Order (Order No. TAMP/61/2009-KPT dated 18.01.2011)	Rates as per the Tariff Order of 2016 (Order No. TAMP/18/2016-KPT dated 21.06.2016) *	Rate now proposed by DPT vide proposal dated 13.03.2018	% increase / (decrease) at 2016 (i.e existing) rates w.r.t. 2011 rates	% increase / (decrease) at proposed rate w.r.t. 2011 rates	% increase / (decrease) at proposed rate w.r.t. 2016 (i.e existing) rates
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E.	Schedule V - Storage charges for general cargo	Unit	Rate	Kutchha Plots	Pucca Plots	Kutchha Plots	Pucca Plots	Kutchha Plots	Pucca Plots	Kutchha Plots	Pucca Plots	Kutchha Plots	Pucca Plots
1	For open space	Rate per 10 sq. Mtr. or part thereof per month or part thereof (in ₹)	7.50	84.00	144.00	23.34	144.00	1020.00%	1820.00%	211.20%	1820.00%	-72.21%	0.00%
	0 – 60 days			168.00	288.00	46.68	288.00	2140.00%	3740.00%	522.40%	3740.00%	-72.21%	0.00%
	61 – 90 days			210.00	360.00	58.35	360.00	2700.00%	4700.00%	678.00%	4700.00%	-72.21%	0.00%
	91 – 180 days			252.00	432.00	70.03	432.00	3260.00%	5660.00%	833.73%	5660.00%	-72.21%	0.00%
	Beyond 180 days												
2	For covered space												
	0 – 60 days		48.00		279.00		279.00		481.25%	481.25%	481.25%		0.00%
	61 – 90 days				558.00		558.00		1062.50%	1062.50%	1062.50%		0.00%
	91 – 180 days				697.50		697.50		1353.13%	1353.13%	1353.13%		0.00%
	Beyond 180 days				837.00		837.00		1643.75%	1643.75%	1643.75%		0.00%
3	Storage of timber on board	Rate per 10 sq. Mtr. or part thereof per day or part thereof (in ₹)	1.50		--		1.96		--	30.67%	30.67%		--
F.	Schedule VI - Trolley Hire Charges	Rate per day or part thereof (in ₹)	15.00		--		19.55		--	30.33%	30.33%		--

* In 2016 Order a note as proposed by DPT was prescribed stating that rates for Kandla Port will be applicable for Tuna Port. Accordingly, in the above table, the applicable rate for Kandla land is shown for Tuna port for comparison as 2016 rates.

% increase / decrease estimated based on coastal rates which is relevant for Tuna port.

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

TAMP/20/2018-DPT : Proposal received from Deendayal Port Trust (DPT) for incorporating a separate tariff schedule for Tuna Port as Schedule V in the existing Scale of Rates (SOR) of DPT.

A summary of comments received from the Adani Kandla Bulk Terminal Private Limited (AKBTPL) vide its email dated 21 May 2018 and comments of DPT thereon are tabulated below:

Sr. No.	Comments received from the users/ user organisations	Comments of DPT												
I.	Adani Kandla Bulk Terminal Private Limited (AKBTPL)													
(i).	AKBTPL are made a party in the matter, because the matter inter alia is in respect of the rental charges applicable for old Tuna Port land.	Comments not furnished by Port.												
(ii).	Before AKBTPL submit its comments on the proposal, AKBTPL would like to give the background in respect of our Concession Agreement with the DPT signed on 26.06.2012.	Comments not furnished by Port.												
(iii).	The land license fees are mentioned in Article 9.1(a) for the concerned project, the said article is reproduced below for ready reference: 9.1. License Fees (a). The Concessionaire shall, as consideration for the use, in its capacity as a bare licensee of the Project Site and the equipment comprises in the Port's Assets, made available in accordance with Article 2.4, pay to the Concessions Authority the sum of ₹8,81,23,400 (Rupees Eight Crores Eighty One Lakhs Twenty Three Thousand Four Hundred Only) (Rupees ₹8,00,00,000 as License Fee for waterfront + ₹81,23,400 as a license fee for land (9,02,600 sq. mtrs. X ₹0.75 X 12 months) (the "License Fee"). Such amount shall be paid annually in advance by the Concessionaire. However, the amount for the license fee for land shall be calculated as per the prevailing SOR set by TAMP from time to time. The License Fee for water front will be constant for throughout the concession period of 30 years.	Comments not furnished by Port.												
(iv).	The land license fees rate as provided in Article 9.1 (a) here-in-above is emerging from Schedule V – Rental Fees applicable then in respect of Tuna Port. The said schedule is reproduced here-in-below for ready reference: <table border="1" style="margin-left: 20px;"> <thead> <tr> <th>Sr. No.</th> <th>Particulars</th> <th>Rate per 10 sq. mtr. or part thereof per month or part thereof (in ₹)</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>For open space</td> <td>7.50</td> </tr> <tr> <td>2.</td> <td>For covered space</td> <td>48.00</td> </tr> <tr> <td>3.</td> <td>Storage of timber on board.</td> <td>1.50</td> </tr> </tbody> </table> <p>The above schedule of rates is emerging from Scale of Rate of DPT w.e.f. 24.03.2011. It would be pertinent to mention that the said SOR is based on tariff guidelines 2005.</p>	Sr. No.	Particulars	Rate per 10 sq. mtr. or part thereof per month or part thereof (in ₹)	1.	For open space	7.50	2.	For covered space	48.00	3.	Storage of timber on board.	1.50	Comments not furnished by Port.
Sr. No.	Particulars	Rate per 10 sq. mtr. or part thereof per month or part thereof (in ₹)												
1.	For open space	7.50												
2.	For covered space	48.00												
3.	Storage of timber on board.	1.50												
(v).	That, on 02.09.2014, DPT filed a proposal for general revision of above referred SOR following 2005 guidelines, which was based on Cost plus ROCE approach as was required by guidelines.	Comments not furnished by Port.												
(vi).	The said proposal as filed by DPT carried Chapter V for Tuna Port, wherein in Schedule V – Rental Fees the hike of 50% was proposed and accordingly the rate for open space was enhanced from ₹7.50 per 10 SQM (as per SOR of	Comments not furnished by Port.												

	24.11.2011) to ₹11.25 per 10 SQM (as proposed in proposal dated 02.09.2014).	
(vii).	However, before this proposal could be finalised, Tariff Policy – 2015 came into existence on 27.01.2015 and accordingly, DPT was instructed by TAMP to file fresh proposal considering the Tariff Policy – 2015.	Comments not furnished by Port.
(viii).	The above Tariff Policy 2015 is similar in its approach in as much as the general principle of ARR is concerned, which is cost plus 16% ROCE. This approach was also a part of Tariff Guidelines 2005, based on which previous SOR of major ports was determined.	Comments not furnished by Port.
(ix).	Based on instructions from TAMP to file fresh proposal following Tariff Policy 2015, DPT vide its proposal dated 22.02.2016 filed a fresh proposal for general revision of SOR, which was approved by TAMP on 12.07.2016 and applicable w.e.f. 11.08.2016.	Comments not furnished by Port.
(x).	However, since Chapter V was inadvertently deleted from the above proposal and because of insertion of Clause 1.2 (xv) Kandla rates shall be applicable to Tuna Port, the same was applied for all the rates of Tuna Port, ever since the applicability of new SOR dated 11.08.2016.	Comments not furnished by Port.
(xi).	This led to representations from various users of Tuna Port & AKBTPL and based on instructions from TAMP, DPT has now filed this proposal for rates in respect of Tuna Port and to add a separate tariff rate for Tuna Port as Schedule V in the SOR of DPT.	Comments not furnished by Port.
	Comments on the proposal:	
(i).	At the outset, the proposal filed by DPT is untenable, unreasonable, bad in law and unjustified, on the following grounds:	In the earlier General Revision of SOR approved by TAMP vide its Order No. TAMP/61/2009-KPT dated 18.01.2011, following the principles of Tariff Guidelines, 2005, there was a separate Chapter i.e. Chapter – V Rates for Tuna port, which included following Schedules: SCHEDULE – I : PORT DUES SCHEDULE–II: BERTH HIRE CHARGES SCHEDULE–III: BEACHING CHARGES SCHEDULE–IV:WHARFAGE CHARGES SCHEDULE–V:RENTAL FEES SCHEDULE–VI:TROLLEY HIRE CHARGES.
(a).	The proposal is clubbing 2 guidelines Tariff Policy 2015 and LPG, 2014 for an existing project during the currency of License.	There is no clubbing of 2 guidelines i.e. Tariff Policy 2015 & LPG, 2014. Proposal has been framed within the ambit of Tariff Policy Guidelines 2015 only.
(b).	LPG, 2014 is applicable only for allotment of fresh land leases and / or at the time of renewal of expired leases. The instant case of Tuna Port is neither a case of expired lease, nor a case of fresh allotment of lease and hence, the valuation exercise done by DPT does not apply to the present revision of SOR for Tuna Port.	
(c).	Besides, the case of Tuna Port is inter alia in respect of License (Storage Charges) Fees for old Tuna Port and subsequent derivation of License Fees applicable for AKBTPL from the Rental Charges applicable at Tuna Port. Thus, this is not a case of fresh bare lease of land.	
(d).	Because of the reasons explained here-in-above, DPT has not applied valuation based approach in case of Licence (Storage) Fees on General Cargo at Clause 2.5 in case of	

	SOR dated 11.08.2016 of DPT, applicable at Kandla because LPG, 2014 is not applicable.	
(e).	The Joint Measurement Drawing dated 28.09.2012 duly signed by DPT officials, clearly mentions that the land allotted for the subject project was submerged and intertidal and thus comparison with any other land or land deals is erroneous.	In the present proposal, while proposing the Storage charges rates for Kutchha plot of Tuna port, only for determining the rates, reliance has been made on latest valuation given by the Valuer for Tuna port area and approved by the LAC. These rates are covered under Cargo related services of the General revision of SOR following the principles of Tariff Guidelines, 2015 and hence as such in proposing the above rates, DPT has not applied LPG, 2014.
(f).	<p>The Valuation Report takes clue from land deals done in villages of Kidana & Bharapar, which are more than 14-18 kms from the area of AKBTPL and completely ignores the nearby villages of Tuna & Vandi, although Gujarat Government ready reckoner is available for Tuna & Vandi villages which are closest, though still about 10 kms away from AKBTPL site. While filing the upfront tariff proposal for Dry Bulk Terminal at Tekra off Tuna, DPT had taken land license fee rates applicable at Kandla, which position was dismissed by TAMP then in 2010 citing distance of 17 kms. between Kandla & Tuna and made a reference to that effect in the following clause in the order, which is reproduced below for ready reference:</p> <p>(c). License fee for the 902600 sq. meters land area is estimated by DPT at ₹10.50 per square meter per month based on the rate of storage fees on general cargo prescribed in the existing SOR of Kandla Port Trust (₹105 per 10 square meter for occupation beyond 180 days). The guidelines require License fee for lands to be calculated as per the SOR of the Port Trusts. It is needless to mention that rate as applicable for the relevant land should be considered. The present proposal of the port is for fixing the upfront tariff applicable to a dry bulk terminal off Tekra near Tuna which will be about 17 Kilometres on west of mouth to Kandla creek. The existing SOR of DPT prescribes separate rates for Tuna under chapter – V. Sl. No.(1) of Schedule V specificities rental for open space at ₹7.50 per 10 sq. mtr. per month. The estimated License fee calculated by DPT by adopting Licence Fee prescribed for Kandla lands is modified accordingly with reference to the specific rate prescribed in the SOR for Tuna.</p> <p>Thus, the Valuation Report on which this proposal is relied upon does not form any basis and must be set aside while deciding the present proposal.</p>	
(g).	Further, the Valuation Report was done in 2012 and the LPG, 2014 were applicable since January, 2014, yet the same was not incorporated by DPT, while submitting the proposal on 02.09.2014, or during revised proposal submitted on 22.02.2016 under Tariff Policy – 2015, while this is brought in at this stage to confuse the matter unnecessarily.	
(h).	DPT has not submitted details of any allotments of land on license for BOT projects or otherwise near Tuna Port in the past 3 years. In case any such allotment is done by them, the details may be shared with respect to area allotted, purpose and license fees applicable. If no such allotment is done, that makes the basis of fixation of rate structure of Tuna land untenable in the instant case. Accordingly, the Valuation Report based on land deals of faraway villages from project location needs to be Quashed in totality along with any conclusions drawn by DPT from the said Valuation Report.	Present proposal is outside the ambit of LPG, 2014 and has no relevance with the same. Hence, there is no requirement of furnishing details of any allotments made in past 3 years etc., as contended.
(i).	It is admitted that the rates applicable for License Fee for land as per Article 9.1 (a) is subject to calculation as per the prevailing SOR set by TAMP from time to time. However,	

	the practice adopted by DPT in the current proposal is questionable and non-tenable.	
(j).	Appendix 12 of the Concession Agreement clearly mentions, that the tariff caps (which is a source of revenue for the terminal) is subject to indexation to inflation to an extent of 60% of the variation in WPI. Since last 3 years the WPI has moved in negative or neutral direction and thus, TAMP has not increased tariff caps, which has resulted in stagnant per metric tonne (PMT) revenues for the Concessionaire, if any component of expense is exorbitantly increased not commensurate with the increase in revenues from the project, the project will become financially unviable and will be on its way to becoming an NPA.	
(k).	The TAMP Order G. No.285 dated 02.11.2010, which was a tariff order in respect of Dry Bulk Terminal at Tuna Tekra and issued before the Concessionaire was selected for the subject Terminal and was part of pre-bid documents. As per Annexure-I formulation of upfront tariff for the dry bulk terminal off Tekra near Tuna at Kandla Port at Serial No. C (f) the cost of License Fee is considered at ₹81 lakhs while fixation of upfront tariff, this was well noted by the Concessionaire before bidding, and as a principle of natural justice, this can only increase in tandem with the increase in revenues for the terminal and not otherwise. This brings us to our submission that if at all SOR for License Fee has to be revised by TAMP as provided for in for the Article 9.1. (a), the same can only increase by 60% of WPI, the way of the revenues for terminal will increase and nothing more than that.	<p>The contention of the Concessionaire that as per Article 9.1(a) License fee can increase by 60% of WPI, is baseless and hence not acceptable. Concession agreement does not explicitly describes so.</p> <p>Since LPG, 2014 is not applicable to the present proposal, hence as contended, escalation in lease rental by 2% p.a. is untenable.</p>
(l).	Although the LPG, 2014 is not applicable in the instant case, as the project was bid and awarded much before LPG, 2014 came into existence, the authority may also like to refer the same, then the same provides for increase in lease rentals at not less than 2% per annum. Taking this as a base, at the most the license fee for AKBTPPL can increase by 2% annum from the base rate provided in the Concession Agreement.	
(m).	The concept of market value of land and SOR based on that is relevant for the award of new projects and/or renewal of expired leases, while in the current case of land fee for AKBTPPL, it is not a case of expired Concession, which is coming to an end only on 18.12.2042. Thus, any rise in license fee for land allotted for the PPP project of AKBTPPL can either be at 60% of WPI indexation or at 2% as provided for in LPG, 2014 on the base license fee as mentioned in Article 9.1 (a) of the Concession Agreement.	
(n).	<p>To better understand this concept we would like to refer to Clause 11.2 (f) of the LPG, 2014 which is reproduced below for ready reference:</p> <p><i>“In respect of PPP projects, the annual lease rent based on latest SoR with the approved rate of annual escalation would be indicated to the bidders at the bidding stage itself. With respects to land allotted for captive facilities, the lease rentals for the land allotted shall be recovered from the users as per the annual lease rental based on latest SoR notified as per Para-13 (c), with the approved rate of annual escalation. The lease rentals, as well as the rate of annual escalation would be approved by the Port Trust Board.</i></p> <p>It is clear from bare reading of above that the concept of LPG, 2014 is unambiguous in respect of PPP projects, when it mentions that the annual lease rent based on latest</p>	

	<p>SOR with the approved rate of annual escalation would be indicated to the bidders at the bidding stage itself.</p> <p>Here also in case of AKBTPL the annual lease rent based on latest SOR the rate was mentioned at ₹0.75 per SQM per month, translating into ₹9 per SQM per annum was disclosed at the bidding stage itself. However, the annual escalation rate was not notified to the bidders, but, since Article 9.1.(a) provides for calculation as per the prevailing SOR set by TAMP from time to time, the maximum hike which can be done by TAMP while revising SOR for license fee it can only increase by 60% of WPI indexation or a 2% per annum, as provided for in LPG, 2014</p>	
2.	We are enclosing herewith the extract of document relied upon in making this submission and the relevant portions are highlighted for easy reading.	Comments not furnished by Port.
3.	It is hereby respectfully submitted to decide the issue duly considering correct interpretation of all the relevant guidelines in the interest of the project, which is already generating huge revenues for DPT and has a potential to generate even more revenues in times to come.	<p>TAMP vide letter No. TAMP/42/2009-KPT dated 21.09.2016 and email dated 10.10.2017 had forwarded representation received from the AKBTPL dated 16.08.2016 and email dated 27.9.2017 respectively and had requested DPT to file a suitable proposal towards rental for the lands at Tuna port following the applicable Guidelines. Accordingly, present proposal to add a separate Tariff rate for Tuna port as Schedule V of the Scale of rate of DPT has been processed and sent for its approval thereof.</p> <p>In view of the above, DPT disagrees with the views expressed by AKBTPL in toto as same are untenable, unreasonable and unjustified and the present proposal is outside the ambit of LPG, 2014.</p> <p>Hence, TAMP is once again requested to kindly approve the proposed SOR for Tuna Port, placed as Annexure – D of the proposal sent vide this office letter No.FA/COST/92 dated 13.03.2018, as per Section 48, 49 & 50 of the MPT Act, 1963.</p>
4.	The land license fee as proposed in the proposal of DPT is vehemently opposed to by the Concessionaire, as it ridiculously hikes the land license fees at AKBTPL by about 94% without any application of mind and calculation on the basis of faulty and baseless Valuation Report.	Comments not furnished by Port.
5.	The averments made against Valuation Report in the instant proposal does not amount to admission of any part of the report, neither does it mean applicability of any part of it in deciding the instant proposal, The Valuation report and any subsequent conclusions drawn by DPT on that basis are challenged in totality in respect of its applicability in deciding the present proposal.	Comments not furnished by Port.
6.	It is submitted that the Concessionaire reserves the right to add, amend or modify this submission as and when necessary before final decision of TAMP in the subject matter and to make additional averments at the time of Joint Hearing.	Comments not furnished by Port.
7.	This submission is without prejudice to our rights and remedies under applicable laws.	Comments not furnished by Port.

2. A joint hearing in this case was held on 11 June 2018 at the DPT premises. The DPT made a brief Power Point presentation of its proposal. At the joint hearing, the DPT and the concerned users / user organizations have made the following submissions:

Deendayal Port Trust (DPT)

- (i). Makes a power point Presentation of its proposal.
- (ii). In last SOR revised in 2016, rate for Tuna Port was made at par with the rate at Deendayal Port by way of prescription of a note. Hence, Chapter on rate for Tuna Port was deleted from the SOR revised in 2016 as proposed by the port.
- (iii). We have received representation from Salaya Sailing Vessels Owners' Association (SSVOA) regarding review of port charges of Tuna Minor Port of DPT.
- (iv). We have also received representation of AKBTPL forwarded by TAMP relating to Kandla rates made applicable to Tuna resulting in steep hike in payment of license fees.
- (v). The DPT constituted a Committee for reviewing the Scale of Rates of Tuna Port.
- (vi). The committee expressed that DPT is not incurring any expenditure on dredging or navigational aids for Tuna Port and the rates prescribed for DPT may not be applied for Tuna Port.
- (vii). The committee recommended to increase vessel related charges from old rates which were approved in 2011, with an appropriate escalation with 100% WPI which is 30.35% as on 2016.
- (viii). As DPT has invested considerable amount on creation of infrastructure facilities at Tuna such as roads, berth, barge jetty, backup area, lighting, etc., hence Committee viewed that reducing cargo related charges is not appropriate.
- (ix). However, as requested by the SSVOA, it was decided to reduce wharfage rate for livestock and other cargo being handled by country craft be considered favourably for reduction and may be worked out based on escalation to be given to the 2011 rate.
- (x). Storage charges is bifurcated into two categories viz. Pucca plots and Kutcha plots. For Pucca plots, rates applicable to Kandla Port will apply and for Kutcha plots rate as per latest valuation given by the Valuer for Tuna Port area and approved by LAC in its meeting held on 20.01.2016 is proposed at ₹84.03 per sq. mtr. p.a.
- (xi). Board has approved separate schedule of rate for Tuna Port.
- (xii). Additional revenue estimated is approximately, ₹129.53 lakhs for cargo related and vessel related charges at the proposed rates for Tuna Port.
- (xiii). No financial implication to Annual Revenue Requirement (ARR) on account of reduction in rates of License fees is estimated as same has not been considered in ARR, as per TAMP Guidelines, 2015.

Salaya Sailing Vessels Owners Association (SSVOA)

- (i). We are happy with the proposal.

Adani Kandla Bulk Terminal Private Limited

- (i). We have given our comments in writing. We request TAMP to consider it.
- (ii). This proposal has arisen because of deletion of Tuna Chapter which was prevailing in 2011 Order.
- (iii). TAMP had written letters to DPT based on our representation.

- (iv). New Chapter on Tuna Port should be made effective from 2016.
- (v). AKBTPL signed Concession Agreement (C.A) on 26 June 2012. CA says license fee is to be revised from time to time.
- (vi). We vehemently opposed revision of license fee as per revision from time to time.
- (vii). Though, LPG, 2014 is not applicable to us, license fee for us should be increased by 2% per annum.
- (viii). Delink Tuna Port and Adani project developed on PPP basis.
- (ix). License fee considered in the upfront tariff notification in November 2010 Order was based on the rate then applicable for Tuna port.
- (x). The valuation exercise done by DPT does not apply to the present revision of rate for Tuna Port.
- (xi). 60% WPI increase or 2% increase in license fee any one of this to be made applicable.
- (xii). We have made our written submissions on land valuation done by valuer.

Gandhidham Chamber of Commerce and Industry (GCCl)

- (i). Linking of Tuna and Adani project should not be there.
- (ii). Valuation method is faulty. Land purchased by private ports is considered. Purchase by private ports cannot be considered especially for Kutcha plots.

Deendayal Port Trust (DPT)

(FA&CAO)

- (i). We have given our comments on comments of Adani.
[Member (Finance), TAMP: TAMP cannot revise the rate approved in upfront tariff Order. TAMP will only fix SOR for Tuna port.]

Adani Kandla Bulk Terminal Private Limited

- (i). Port had earlier in the year 2014 sought 50% increase in Tuna rates. This proposal could not be finalised as Tariff Policy 2015 came into existence from January 2015. Subsequently, the DPT sought revision of SOR under Tariff Policy 2015 wherein the Chapter on Tuna Port was deleted inadvertently.
- (ii). In current proposal, the port has sought around 900% increase in license fee for Tuna Port. What additional facility has been created, what has happened in the interim period for such a steep hike need to be seen?
- (iii). TAMP to give guidelines to DPT and to us on issues arising from the notification of 2010 relating to upfront tariff and notification on SOR of DPT.
- (iv). We reiterate that since the issue arises due to deletion of Chapter V Tuna Port, the proposed rate should be given with retrospective effect. DPT has not mentioned from when the rates proposed for DPT should be made effective. Original position may be reinstated and from then the correction may be done.

3. As agreed at the Joint hearing, AKBTPL vide its letter dated 15 June 2018 has given further written submissions. The written submissions received from the AKBTPL was forwarded to DPT for feedback information vide our letter dated 22 June 2018 to furnish its comments. This was followed by the reminders dated 28 June 2018 and 13 July 2018. The DPT vide its letter dated 21 July 2018 has responded. A summary of the further written submission made by AKBTPL and the response of DPT is tabulated below:

Sl. No.	Written submissions of AKBTPL	Response furnished by DPT
(i).	It is to reiterate that this proposal for incorporating separate tariff schedule for Tuna Port has been moved by DPT because the same was missed out during the Kandla Tariff Revision order dated 11.08.2016. Thus, the applicability of this proposal should be made w.e.f. 11.08.2016.	Proposal for incorporating separate tariff schedule for Tuna Port has been moved by DPT, not because the same was missed out during the Revision Order dated 11.8.2016, but because of the insistence from M/s. AKBTPL, TAMP had requested DPT, to file a suitable proposal towards rentals for the lands at Tuna port. In the last Revision of SOR approved by TAMP vide Order dated 11.08.2016, DPT had proposed condition under Sr. No. 1.2 (xv) under Chapter I that "Kandla rates shall be applicable to Tuna Port", which was approved by TAMP.
(ii).	AKBTPL strongly oppose the Land Valuation Report which is considered as the basis of determination of Land Rates of Tuna. The market Value of Land Rates which are considered is Industrial developed Land which is not in Tuna –Village but in Bhrapar & Kidana which is located behind Kandla Special Economic Zone and around 14-18 Km away from our Tuna Terminal. It is further to be noted that the last land allotted by DPT at Tuna was done to us @ rate of ₹0.75 per Sq. mtrs per month and post which no land allotment has been done at Tuna. Besides, the land allotted to AKBTPL was submerged land of inter-tidal area and AKBTPL have incurred significant costs in ground raising.	As earlier communicated, only for determining the rates, reliance has been made on latest valuation given by the Valuer for Tuna port area and approved by the LAC. These rates are covered under cargo related services of the General revision of SOR following the principles of Tariff Guidelines, 2015.
(iii).	It is further to be noted that the Rate of License Fee applicable for AKBTPL is derived from the Schedule V (Rental Fees) of Chapter V of DPT SOR. Now such SOR should be based on Tariff Fixation Guidelines 2015 which follows the Principle of Cost + ROCE. However, DPT has merged Tariff Fixation Guidelines 2015 and LPG, 2014 for deriving the Tariff. Going by the current practice being followed by DPT, every 3 years the License Fee of AKBTPL will be revised, which for a long term agreement of 30 years is unjust and make the project unviable. In the instant case, DPT has not made any allotment at a rate higher than the land allotted to AKBTPL in 2012. Even if future allotments for projects is made at higher rate by DPT to prospective projects, the escalation in License Fee cannot happen for the land allotted for Tuna Dry Bulk Terminal in such arbitrary fashion.	There is no merging of Tariff Guidelines 2015 and LPG, 2014 for deriving the proposed Tariff. Present proposal has been framed within the ambit of Tariff Policy Guidelines 2015 only. Further as per Articles 9.1. of the Concession agreement signed with M/s.AKLBTPL i.e. "...However, the amount for the License fee for land shall be calculated as per the prevailing Scale of rates set by TAMP from time to time." Thus, M/s.AKBTPL was well aware of the conditions of the Concession agreement and same has been accepted by endorsing the agreement and hence their contention is not acceptable.
(iv).	To settle this issue forever it is required to TAMP to issue suitable directives to DPT as under:	
(a).	New escalation methodology may be devised for escalating the License Fees for Tuna Dry Bulk Terminal, which can either be based on 60% of WPI formula as applicable to PPP Project or as per Amend LPG, 2014.	The contention of the Concessionaire that License fee can increase by 60% Of WPI, is baseless and hence not acceptable. Also LPG, 2014 is not applicable to the present proposal, hence escalation of 2% cannot be applied to License fee recoverable from AKBTPL and Concession agreement does not explicitly describes so.
(b).	Till the time such formula is agreed upon the License Fees to be charged for AKBTPL should be at the base rate as mentioned in the Concession Agreement dated 27.06.2012.	
(v).	The calculation in respect of Gazette No. 285 dated 2.11.2010 based on which this project was put up by DPT for bidding, were approved by TAMP and hence TAMP is duly empowered to decide in the matter.	In view of the above, DPT once again, disagrees with the views expressed by AKBTPL in toto as same are untenable, unreasonable and unjustified and the present proposal is outside the ambit of LPG, 2014.

	Further the change in the applicability of AKBTPL License Fee Tariff as proposed above will not have any impact on the ARR Calculation as this income was not taken into consideration for formulating the DPT's SOR & the same is already submitted by DPT in their proposal.	
(vi).	Considering the above submission in addition to AKBTPL previous submissions, request to kindly examine the proposal and pass a suitable order which will address AKBTPL grievances & concerns to avoid multiplicity of causes of action in the matter.	TAMP is once again requested to kindly approve the proposed SOR for Tuna Port, placed as Annexure-D of the proposal sent vide this office letter No. FA/COST/92 dated 13.03.2018, as per Section 48, 49 & 50 of the MPT Act, 1963.
