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Tariff Authority for Major Ports

G.No.421

New Delhi,

01 November 2017

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the review application filed by the Mormugao Port Trust (MOPT) on the tariff Order No.TAMP/40/2016-SWPL dated 17 November 2016 passed by this Authority in respect of revision of the Scale of Rates of South West Port Limited (SWPL) for its operations at the berth nos.5A and 6A at the Mormugao Port Trust, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
No. TAMP/14/2017-MOPT

Mormugao Port Trust

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Applicant

QUORUM:

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

O R D E R

(Passed on this 15th day of September 2017)

This case relates to the review application filed by the Mormugao Port Trust (MOPT) under cover of its letter dated 10 February 2017 on the tariff Order No.TAMP/40/2016-SWPL dated 17 November 2016 passed by this Authority in respect of revision of the Scale of Rates of South West Port Limited (SWPL) for its operations at the berth nos.5A and 6A at the Mormugao Port Trust.

2.1. This Authority vide its Order no.TAMP/40/2016-SWPL dated 17 November 2016 had revised the Scale of Rates of the South West Port Limited (SWPL) based on the proposal filed by SWPL and following 2005 Tariff Guidelines. The SOR approved on 17 November 2016 was notified in the Gazette of India on 30 November 2016 vide Gazette No.433. The revised SOR came into force after expiry of 30 days from the date of notification of the Order notifying the SOR in the Gazette of India. The validity of the SOR is prescribed till 31 March 2019. The speaking Order passed by this Authority was notified in the Gazette of India on 6 January 2017 vide Gazette No.10.

2.2. In the said Order, this Authority had granted tariff increase of 27.80% in cargo handling charge and 10% in berth hire charge as against tariff increase of 34% and 17% sought by SWPL for the corresponding activities based on the cost position reflected by the cost statement and analysis contained in para 13(xxv) of the Order dated 17 November 2016.

2.3. The relevant extract of the tariff Order is reproduced below for ease of reference:
"The consolidated cost statement and main activity-wise cost statements for the years 2016-17 to 2018-19 have been modified in line with the above analysis. The modified cost statements are attached as Annex – II (a) to (c). The summarised position of the results disclosed by the financial / cost statements is tabulated below:

Particulars	Operating Income (₹ in lakhs)				Net Surplus (+) / Deficit (-) after adjustment of past surplus (₹ in lakhs)				Net Surplus (+) / Deficit (-) as a % of operating Income			Avg. surplus/ deficit %
	2016-17	2017-18	2018-19	Total	2016-17	2017-18	2018-19	Total	2016-17	2017-18	2018-19	
Consolidated cost statement for the terminal as a whole	16428.31	16413.03	16401.59	49242.93	(1612.79)	(2675.68)	(3425.78)	(7714.25)	(9.82%)	(16.30%)	(20.89%)	(15.7%)
Cargo handling Activity	10046.00	10046.00	10046.00	30138.00	(4076.82)	(5179.12)	(5999.06)	(15255.00)	(40.58%)	(51.55%)	(59.72%)	(50.62%)
Berth hire activity	6382.31	6367.03	6355.59	19104.93	2464.03	2503.45	2573.27	7540.75	38.61%	39.32%	40.49%	39.47%

The SWPL in the revised proposal, has proposed 34% increase in the cargo handling charges except storage charges and 17% increase in the berth hire charges.

While furnishing its comments on the proposal for general revision of Scale of Rates of SWPL, the MOPT has stated that the cargo handling charges at Adani Terminal is ₹247.20 per tonne and upfront tariff fixed for Berth No. 8 is ₹248.10 per tonne. In comparison, the existing rate of SWPL terminal is ₹130.70 and even after the proposed increase would ₹169.91 which is about 30% lesser than the charges of Adani Terminal as well as Berth No.8 and 9. The MOPT has also stated that the proposed berth hire charges of SWPL berth are substantially higher than berth hire charges of Adani Terminal and Berth No.8 and 9 charges. The Berth Hire charges of Adani Terminal and Berth No.8 and 9 are ₹0.66 and ₹0.84 per GRT per hour respectively for foreign going vessel as compared to ₹2.55 per GRT per hour proposed by SWPL. In this connection, it is relevant to mention that the comparison drawn by the MOPT of tariff fixed for the PPP operators governed under upfront tariff guidelines of 2008 with SWPL whose tariff is fixed under 2005 Guidelines is not relevant as they are governed by different set of guidelines.

It is evident from the above table, that the overall cost position reflects an overall net deficit of 15.7% for the period 2016-17 to 2018-19 at the prevailing rates. In absolute terms, the overall net deficit is ₹7714.25 lakhs for the three years period.

It is seen that the aggregate deficit in the cargo handling activity is ₹15255 lakhs for the three years period which is being cross subsidized by overall net surplus of ₹7540.75 lakhs in the berth hire activity and the remaining net deficit for the terminal as a whole is ₹7714.25 lakhs. This warrants increase in the existing tariff of the SWPL to cover the estimated net deficit of ₹7714.25 lakhs in the current tariff cycle. By the time the Order approved by this Authority comes into effect it may be beginning of January 2016. Therefore, tariff increase is granted in such a way to cover the deficit of ₹7714.25 lakhs in the remaining 27 months of the three year tariff cycle of 2016-17 to 2018-19.

For this purpose, if we go by the activity wise cost position, then the berth hire will call for a steep reduction of 39.47% in the tariff whereas, the cargo handling activity will call for a steep increase of 50.62%. Instead of granting steep increase in cargo handling activity and effecting steep decrease in the berth hire activity if across the board increase is to be accorded it comes to 20.89%. However, SWPL has sought 17% increase in berth hire and 34% increase in cargo handling expense. As stated earlier, the MOPT has raised concern that the berth hire charges at SWPL is on a higher side and also the port does not earn any revenue share on berth hire charges. Hence, it is not prudent to grant an increase in berth hire more than the level sought by the SWPL. In view of the above position and in view of the concern raised by the MOPT about increase sought in the berth hire, this Authority decides to grant tariff increase of 10% in the berth hire as against 17% increase sought by the SWPL. The additional revenue on this account is estimated to be ₹1431.82 lakhs from January 2017 till 31 March 2019. The balance deficit of ₹6282.43 lakhs is bridged by granting 27.80% increase in cargo handling charge (except storage charge) as against 34% increase sought by the SWPL (except storage charge). The SWPL has proposed status quo in storage charge and the same is approved.

A calculation showing increase in the existing tariff granted by this Authority to meet the deficit of ₹7714.25 lakhs is given below:

			(₹ in Lakhs)
Particulars			Total
Total Deficit for the current tariff cycle for the terminal as a whole after adjustment of past period surplus			7,714.25
	Cargo related	Vessel related	
Prorated revenue for 3 months i.e., January 2017 to March 2017	2,511.50	1,595.58	4,107.08
Estimated Revenue for the years 2017-18 to 2018-19	20,092.00	12,722.62	32,814.62
Total Revenue for a period from January 2017 to March 2019	22,603.50	14,318.20	36,921.70
Estimated Additional revenue from 10% Tariff increase granted in berth hire.	-	1,431.82	-
Balance deficit bridged by increasing cargo handling charge. [₹7,714.25 - 1,431.82]	6,282.43	-	-
% increase granted in cargo handling charge (excluding storage charges) (SWPL proposed 34%)	27.79% (Rounded to 27.80%)	-	-

2.4. With reference to the said Order dated 17 November 2016, the Licensor Port, Mormugao Port Trust (MOPT) has filed a Review Application on 10 February 2017 seeking review of the Order dated 17 November 2016 passed by this Authority revising the SOR of SWPL.

2.5. The main points made by the MOPT in its review application are summarised below:

- (i). SWPL had sought an increase of 34% in Cargo Handling Charges (CRC) and 17% in berth hire charges. From the Annexure to the Order passed by TAMP it is observed that, the Cargo handling activity is deficit to the extent of 50.02% and berthing activity is in surplus by 39.47%. Though the berthing activity is in surplus, berth hire charges were increased by 10% and cargo handling charges were increased only by 30% although, Cargo handling activity is in deficit by 50.02%.
- (ii). As per the License agreement signed, SWPL has to pay royalty only on Cargo Handling Charges and not on berth hire charges. Therefore, there should not be any loss of revenue to the Port in the guise of cross subsidization and overall surplus. The

increase in berth hire charges will result in unjust enrichment to SWPL and financial loss to the Port. The Port has raised this point vide our above referred letter. However, SWPL has not given a convincing reply justifying the increase in berth hire rates.

- (iii). Also, the SWPL Cargo handling rates are very much less and berth hire is higher as compared to those of the neighbouring PPP operators of Berth No.7, 8 & 9 to the extent of 45%.

3. Thus, the MOPT has requested this Authority to review the Order dated 17 November 2016 and increase the charges for cargo handling activities in the interest of the Port.

4.1. Clause 3.3.1. of the tariff guidelines of March 2005 stipulates that application of review of any tariff Order will be entertained to the limited extent of errors apparent on the face of records considered in the relevant proceedings, provided such an application is filed within 30 days of the notification of the Order in the Gazette of India. The detailed speaking tariff Order in reference was notified on 6 January 2017 and the MOPT has filed the review application on 10 February 2017, which is within the prescribed time limit of 30 days.

4.2. In the past, there have been instances where a few private terminal operators have made an application for review of their tariff Orders. Such review proposals filed by the proposed BOT terminal operators were entertained and have been disposed by this Authority following the usual consultation process. However, in the present case, the licensor Port (MOPT) has filed a review application on the Order dated 17 November 2016 passed by this Authority revising the SOR of SWPL. Since, the MOPT is a licensor port and considering the points made by the MOPT as brought out at para 2.2 above, the review application of MOPT is taken up as a separate tariff case.

5.1. In accordance with the consultative procedure prescribed, a copy of MOPT letter dated 10 February 2017 was forwarded to South West Port Limited (SWPL) and concerned users/ user organisations seeking their comments vide our letter dated 15 February 2017. We have not received comments from concerned users/ user organisations.

5.2. The SWPL has vide its email dated 9 March 2017 forwarded its comments on the points made by MOPT.

6. A joint hearing in this case was held on 30 May 2017 at the MOPT premises. At the joint hearing, the MOPT and SWPL have made their submissions.

7.1. At the joint hearing, it was brought out that the reasons for tariff increase granted by this Authority in the SOR of the SWPL is explained in detail in the Order. At the joint hearing, the MOPT has stated that port wants higher tariff increase in cargo handling charge and lower tariff increase in the berth hire charge. In this context, the SWPL has pointed out that if cargo handling charge is increased further, then the traffic will get diverted to other ports. The MOPT at the joint hearing stated that port does not want the traffic to reduce on account of higher tariff increase sought by it in cargo handling charges.

In order to reconcile the position taken by MOPT and SWPL, both agreed to sit together and come up with an amicable solution on the review application filed by the MOPT so as to meet the overall deficit of ₹77.14 crores for the years 2016-17 to 2019-20 assessed in the tariff Order of November 2016.

7.2. Accordingly, as agreed at the joint hearing, MOPT and SWPL were requested vide our letter dated 5 June 2017 to sit together and come up with an amicable solution within a week's time on the review application filed by MOPT in such a way that mutually agreed position would enable the SWPL to bridge the overall deficit of ₹77.14 crores for the year 2016-17 to 2019-20. This was followed by a reminder to MOPT and SWPL vide our letter dated 20 June 2017 to expedite its response to enable us to proceed further.

7.3. In response, MOPT vide its letter dated 02 August 2017 citing that review of the Order may result in reduction in cargo handling charges which will adversely affect the revenue share earnings of the port, has proposed to withdraw the review application filed by the Port to review the charges for cargo handling activities.

8. 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 parties will be sent separately to the relevant parties. These details will also be made available at our website <http://tariffauthority.gov.in>.

9.1. As already brought out earlier, this Authority in the Order No.TAMP/40/2016-SWPL dated 17 November 2016 has granted tariff increase of 27.80% in cargo handling charge and 10% in berth hire charge as against tariff increase of 34% and 17% sought by SWPL for the corresponding activity. Para 13 (xxv) of the detailed Order elaborately deals with the tariff increase granted in the said Order.

9.2. The MOPT in the review application has made a statement that tariff increase granted by TAMP in berth hire will result in unjust enrichment. In this regard, it is to state that the November 2016 Speaking Order passed by this Authority is to bridge the net deficit at ₹77.14 crores for the years 2016-17 to 2018-19 reflected by the cost statement. Whatever tariff increase granted by this Authority in the said Order is to meet the said deficit of ₹77.14 crores. That being so, there is no unjust enrichment on account of tariff increase granted in the said Order to the SWPL.

9.3. This Authority is guided by the Tariff Guidelines of 2005 issued by the Government to this Authority under Section 111 of the MPT Act, 1963 as a policy direction. This Authority is bound to follow the tariff guidelines to determine the tariff of BOT operators, including SWPL. There is no provision in the Tariff Guidelines to adjust the tariff in accordance with the Revenue share payable or not payable by the BOT operator to the licensor port. The tariff determination methodology prescribed in the 2005 guidelines is uniformly followed by this Authority in all the cases of BOT Terminals.

10. In any case, the MOPT has itself proposed to withdraw the review application filed by the port to review the Order passed by this Authority in November 2016.

11. In the result, and for the reasons given above, and based on a collective application of mind, this Authority disposes of the review application dated 10 February 2017 filed by the MOPT as withdrawn by the port.

(T.S. Balasubramanian)
Member (Finance)

SUMMARY OF THE ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY

F.No. TAMP/14/2017-MOPT - Review Application filed by the Mormugao Port Trust (MOPT) on the tariff Order No.TAMP/40/2016-SWPL dated 17 November 2016 passed by the Authority in respect of revision of the Scale of Rates of South West Port Limited (SWPL) for its operations at the berth nos.5A and 6A at the Mormugao Port Trust.

A summary of comments on the points made by MOPT and response of SWPL is tabulated below:

Sr. No.	Points made by MOPT in the review application dated 10.02.2017 (page no.1-2/c)	Comments of SWPL (page no.82-83/c)
1.	SWPL had sought an increase of 34% in Cargo Handling Charges (CRC) and 17% in berth hire charges. From the Annexure to the Order passed by TAMP it is observed that, the Cargo handling activity is deficit to the extent of 50.02% and berthing activity is in surplus by 39.47%. Though, the berthing activity is in surplus, berth hire charges were increased by 10% and cargo handling charges were increased only by 30% although, Cargo handling activity is in deficit by 50.02%.	Mormugao Port Trust's (MPT) remark that the tariff will result into unjust enrichment to SWPL and financial loss to the port is not valid as customer considers total logistics cost and if that cost increases customer may consider to re-align its business to the extent of increase in cost. In case Cargo handling cost is increased instead of berth hire charges, to maintain return over net assets employed, additional revenue share which will be payable to MOPT by SWPL will also need to be added to the cargo handling charges payable by customer. This in turn will result into increased total logistics cost to the customer and hence may result into lesser business which will impact not only terminal but also to the revenue of the Port.
2.	As per the License agreement signed, SWPL has to pay royalty only on Cargo Handling Charges and not on berth hire charges. Therefore, there should not be any loss of revenue to the Port in the guise of cross subsidization and overall surplus. The increase in berth hire charges will result in unjust enrichment to SWPL and financial loss to the Port. The Port has raised this point vide our above referred letter. However, SWPL has not given a convincing reply justifying the increase in berth hire rates.	Comparing tariff with neighbouring PPP operators or with any other terminal is not logical as there is no such provisions but that too at the time of initial tariff calculation and there is no such provision of tariff revision at later years.
3.	Also the SWPL cargo handling rates are very much less and berth hire is higher as compared to those of the neighbouring PPP operators of Berth No.7, 8 & 9 to the extent of 45%.	Clause 3.3.1. of Tariff Guidelines 2005 stipulates that, "Application for review of any tariff will be entertained to the limited extent of errors apparent on the face of records considered in the relevant proceedings, provided such an application is filled

		<p>within 30 days of the notification in the Official Gazette”.</p> <p>Tariff Order for SWPL Terminals was notified in Gazette of India on 30 November 2016 vide notification number 433 and MOPT has submitted its letter to review tariff order on 10 February 2017 which was much later than allowable time for review of 30 days from the notification in the official gazette.</p> <p>[The notification No.433 dated 30 November 2016 relates to the notification of Scale of Rates of SWPL. The Speaking Order relating to the Scale of Rates was notified on 06 January 2017 vide Gazette No.10. Only with the notification of Speaking Order on 06 January 2017, disposal of the SWPL proposal came to an end. That being so, the Review Application dated 10 February 2017 is within the prescribed time limit of 30 days].</p>
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2. A joint hearing in this case was held on 30 May 2017 at the MOPT premises. At the joint hearing, the MOPT and SWPL have made the following submissions:

Mormugao Port Trust (MOPT)

- (i). Briefly explained the application filed by the port to review the tariff Order dated 17 November 2016 relating to revision of SOR of SWPL.
- (ii). SWPL sought 34% increase in cargo and 17% increase in Berth hire. From the cost statement attached to the Order it is seen that the berth hire activity is in surplus by 39.47%. Though berth hire activity is in surplus, the Authority has granted 10% increase in berth hire charges. The cargo handling charges was increased by 27.8%.
- (iii). As per Concession Agreement signed by us with SWPL, revenue share is payable on cargo handling charges and not on berth hire.
- (iv). Hence, we request to increase cargo handling charges further.
- (v). We do not want traffic should go to the other port. We request to consider necessary adjustment in tariff such that traffic is not impacted.

[TAMP: The MOPT in the review application has made a statement that tariff increase granted by TAMP in berth hire will result in unjust enrichment. In this regard, it is to state that the November 2016 Order passed by the Authority is to bridge the net deficit at ₹77.14 crores for the years 2016-17 to 2018-19 reflected by the cost statement. Whatever tariff increase is granted, it is to meet the said deficit. That being so, there cannot be unjust enrichment on account of tariff increase granted in the said Order.]

South West Port Limited (SWPL)

- (i). We accept that as per the Concession Agreement revenue share is not payable to MOPT on berth hire. Revenue share has been agreed between port and the SWPL in the License Agreement. The port should not rake up this matter now.
- (ii). In every revision, across the board tariff increase has been granted by TAMP.
- (iii). MOPT should appreciate that in the current revision we sought differential tariff increase. We ourselves sought lower tariff increase of 17% in berth hire charges. Higher increase of 34% was sought by us in cargo handling charges.
- (iv). If average increase across the board was sought, it would have adversely impacted the port in terms of revenue share.
- (v). If cargo handling tariff is increased exorbitantly, then the traffic will move to other ports like Krishnapatnam, etc. Both SWPL and MOPT will be the losers. The port will then lose revenue share due to reduction in the traffic. Port should keep this factor in mind.
- (vi). We do not know whether we will be able to achieve 7.50 MMT traffic in the current year.
- (vii). SWPL is also impacted because of 2005 guidelines applicable to the BOT operators. Under the tariff guidelines of 2005, if BOT operator operates efficiently, it results in decrease in tariff.
