

(Published in Part - III Section 4 of the Gazette of India, Extraordinary)
TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 416

New Delhi,

24 October, 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 an Application dated 12 October 2015 from New Mangalore Port Trust (NMPT) for review of rate of port dues approved by this Authority in the Order No.TAMP/17/2014-NMPT dated 20 May 2014 on the proposal of NMPT for fixation of provisional rates for handling of vessels at Single Point Mooring (SPM) facility at NMPT and port dues approved in the final Order dated 02 July 2015 as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/88/2016-NMPT

New Mangalore Port Trust

Applicant

QUORUM:

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

ORDER

(Passed on this 15th day of September 2017)

This case relates to an Application dated 12 October 2015 from New Mangalore Port Trust (NMPT) for review of Order passed by this Authority on the proposal of NMPT for fixation of provisional rate of port dues effective from the date of commencement of the commercial operations i.e. 29 August 2013 for handling of vessels at Single Point Mooring (SPM) facility at NMPT. SPM is a new facility created at the NMPT by the Mangalore Refinery and Petrochemicals Limited (MRPL) for handling its crude at SPM.

2. The NMPT vide its letter dated 2 April 2014 sought approval of the following rates on provisional basis totally adopting rates prescribed in the then existing Scale of Rates of Cochin Port Trust (COPT) for SPM operations backed by the consent letter of Mangalore Refinery and Petrochemicals Limited (MRPL) dated 25 March 2014.

(a).	Port Dues	@US \$ 0.377 per GRT
(b).	Pilotage Charges	@US \$ 0.4259 per GRT
(c).	Wharfage	₹25/- per MT
(d).	Tug Hire Charges	@US \$ 0606.56 per GRT

3. This Authority has passed an Order No.TAMP/17/2014-NMPT dated 20 May 2014 approving rates on provisional basis for the SPM facility with retrospective effect from the date of commencement of the commercial operations i.e. 29 August 2013. The said Order was notified in the Gazette vide Gazette no.186 dated 20 June 2014. The provisional rates approved by this Authority in the said Order are as follows:

Sr. No.	Particulars	Unit of levy	Foreign going vessels (in US \$)	Coastal vessels (in ₹)
(1).	Port dues	Rate per GRT	0.143	2.32
(2).	Pilotage fees for SPM operations	Rate per GRT	0.4259	11.69
(a).	Upto 30000 GRT			
(b).	30001 GRT to 60000 GRT			
(c).	60001 GRT and above			
(3).	Hire charges for tugs for SPM operations	Rate per tug hour or part thereof	606.56	16645.00
(4).	Wharfage on crude oil at SPM	Rate per MT	25.00	25.00

4.1. As can be seen from the first table, the NMPT had proposed to adopt the port dues of US\$0.377 per GRT per entry for foreign-going vessel as per the port dues prescribed in the then existing Scale of Rates of the COPT. Port dues is a fee for entry of vessel into the port. At the COPT, the port dues for Crude oil tankers visiting SBM has been prescribed at par with the port dues for tanker vessels at the berths. The then existing Scale of Rates of NMPT prescribed uniform port dues for all categories of vessels. Since port due is a fee for entry of the vessel and following the analogy followed in COPT, it was found appropriate to prescribe port dues for SPM vessel at par with port dues applicable in the existing SOR of NMPT for POL vessels i.e. US\$ 0.143 per GRT per entry for foreign-going vessel and ₹2.52 Per GRT per entry for coastal vessel. (Reference Para 4.6 of Order dated 20 May 2014)

4.2. Ordinarily, the rates approved by this Authority have prospective effect. The NMPT had, however, sought approval of the final (proposed) rate from August 2013 i.e. from the commencement of the SPM operations. This Authority while approving the provisional rate

adopting the rate of COPT as proposed by the NMPT had stated that if, at the time of fixation of final rate, it is found that adoption of COPT rates on provisional basis will cause hardship to the port, then fixation of final rate will be dealt with in an appropriate manner following Clause 2.12 of the 2005 tariff guidelines. Clause 2.12 states as follows *“When a new facility is commissioned or existing facilities are privatised by any port trust, the initial tariff to be allowed will not exceed the existing tariff level at the same port for comparable facilities. If such comparison is not available, prevailing tariff at comparable nearby port will be considered as the reference level. The initial tariff so adopted will be valid for the first year of operation where after revised tariff will be fixed based on the admissible cost and investment of the private operator. If it is established by the private operator that adopting the existing tariff of port trust will cause hardship to him in view of a higher level of investment made, then a separate cost based tariff will be allowed to him right from the commencement of commercial operations.”*

4.3. The provisional rates were approved with retrospective effect from the date of commencement of the commercial operations i.e. 29 August 2013 for a period of one year from 29 August 2013 or till the effective date of implementation of the Order disposing of the proposal filed by NMPT for fixation of final rate for SPM, whichever is earlier.

5. With reference to the above said Order approving provisional rates for SPM, the NMPT vide its letter no.PT/FIN/REV/SOR/SPM/2013-14 dated 04 August 2014, 18 August 2015 and 03 September 2015 has made submissions. The main submissions made by the NMPT are summarized below:

- (i). The Order passed for fixation of provisional rates for SPM facility at NMPT is not in conformity with the proposal filed by NMPT and the consent letter furnished by MRPL. NMPT had filed the proposal seeking approval for adoption of Cochin Port Trust rates in totality on provisional basis for handling vessels at SPM facility. However, orders have been passed with modification by prescribing the rate for Port dues @ US \$ 0.143 per GRT as prevailing in the SOR of NMPT instead of COPT rates for Port dues @ US \$ 0.377 per GRT.
- (ii). The rate of Port dues of NMPT has not been revised from 2006 onwards. The NMPT has sent a modified proposal with detailed calculations for SPM operations to the Authority vide letter dated 21 July 2014. The modified proposal of NMPT seeks approval of rates for SPM facility which are higher than the provisional rates notified by the Authority. The provisional rates notified by the Authority is resulting in some refunds to be made to the parties for vessel related operations at SPM.
- (iii). The proposal filed by NMPT seeking approval for the interim rate for SPM operations adopting COPT rates in totality is in line with the provisions prescribed in clause 2.12 of 2005 guidelines and also has the consent of MRPL.
- (iv). The interim Order passed by partially adopting COPT rates has brought great hardship to the port as an amount of ₹29.59 crores has been claimed as refund by seven Vessel related agents for the 53 vessels for the period between 29.8.2013 to 26.5.2014 based on the Authority's interim Order.
- (v). The port has not given any refund claimed by the above said parties during July 2014. In this context, the conclusion given by the Authority in the final Order passed Order No.TAMP/17/2014-NMPT dated 2 July 2015 stated that *“though in terms of percentage there appears to be gap a working of revenue estimation for a year at the provisional rates and at the rates approved by the Authority based on the vessel traffic of 66 nos. and the GRT parameters and tug hours as considered in the calculation shows that the variations in absolute terms is not significant as to cause hardship to the port.”* is not correct.
- (vi). The Order may be reviewed to accord approval for adoption of the rates of COPT provisionally in totality by restoring the rates for Port dues as prevailing in the SOR of COPT till the final rates are determined. Refund any amount due will be only after the final rates are determined by the Authority for SPM activities.

6. The NMPT filed a proposal dated 14 March 2014 for fixation of final rates for SPM operations along with detailed cost calculation. Subsequently, the port revised its proposal vide its letter dated 21 July 2014 and further revised proposal dated 11 February 2015. The NMPT also stated that the SPM operations have started from 29 August 2013 and therefore, it has requested that the proposal may be made effective from 29 August 2013 onwards.

7. The summary of the rates proposed by the NMPT in the revised proposal along with the rates initially proposed as well as the rates provisionally approved by this Authority in its Order dated 20 May 2014 is tabulated below:

Sl. No.	Item	Rates proposed by NMPT in its original proposal Dated 2 April 2014 for provisional rate	Provisional Rates approved by this Authority vide Order dated 20 May 2014 (based on COPT rates proposed by NMPT except for port dues)	
			Foreign	Coastal
(i).	Wharfage charges	₹25/ tonne	₹25.00 per MT	₹25 per MT
(ii).	Vessel related charges			
	(a).	Pilotage charges		
		(a). Upto 30,000 GRT	US \$ 0.4259 per GRT	₹11.69 per GRT
		(b). 30,001 to 60,0000 GRT		
		(c). 60,001 GRT and above		
	(b).	Pull back Tug Hire charges	US \$ 606.56 per tug hour or part thereof	₹16645.00 per tug hour or part thereof
	(c).	Port dues	US \$ 0.143 per GRT (as against US \$ 0.377 of COPT rate proposed by the port)	₹2.32 per GRT
			US \$ 0.377 per GRT	

8. This Authority had passed a speaking Order No.TAMP/17/2014-NMPT dated 2 July 2015 approving final rates for handling of vessels at SPM facility at NMPT. The said Order was notified by this Authority vide Gazette No.256 dated 22 July 2015. The final rates approved by this Authority in the said Order are as follows:

Sr. No.	Particulars	Unit of levy	Foreign going vessels (in US \$)	Coastal vessels (in ₹)
(1).	Port dues	Rate per GRT	0.143	2.32
(2).	Pilotage fees for SPM operations	Rate per GRT	0.2515	9.58
(a).	Upto 30000 GRT			
(b).	30001 GRT to 60000 GRT			
(c).	60001 GRT and above			
(3).	Tugs Hire charges for SPM operations	Rate per tug hour or part thereof	1240.63	47275.45
(4).	Wharfage on crude oil at SPM	Rate per GRT	₹25.00	₹25.00

9.1. The final wharfage rate and port dues approved by this Authority for SPM operations are same as approved provisionally in May 2014. The only difference in the provisional rate and final rate is in respect of pilotage fee and pull back charges both of which fall under vessel related operations at the SPM. As regards pilotage fee, the rate approved is found to be 41.00% lower than the provisional rate and for pull back operations it is 104.54% higher than the provisional rate approved by this Authority in May 2014 Order. Though in terms of percentage there appeared to be a gap, a working of revenue estimation for a year at the provisional rate and at the rate approved by this Authority based on the vessel traffic of 66 nos. and the GRT parameters and tug hours as considered in the calculation showed that the variation in absolute terms is not significant to cause hardship to the port. The final rates for SPM operations were, therefore, given effect prospectively after expiry of 30 days from notification of the Order in the Gazette i.e. from 21 August 2015. The provisional rates approved by this Authority from 29 August 2013 or from the date of commencement of operation of SPM, whichever is earlier, and levied by

the COPT till the final rates approved came into effect was regularized as such. The period of validity of the provisional rates approved in the Order dated 20 May 2014 stood modified to this extent.

9.2. A summary of the rates proposed by NMPT vide its proposal dated 2 April 2014, provisional rates approved by this Authority by Order dated 20 May 2014 for the period from 29 August 2013 to 20 August 2015, revised rates proposed by NMPT by its proposal dated 21 July 2014 and final rates approved by this Authority by Order dated 2 July 2015 for the period from 21 August 2015 to 12 May 2016 is tabulated below for ease of reference:

Sl. No.	Item	NMPT Rates proposed by NMPT in its original proposal dated 02 April 2014 for provisional rate	TAMP Provisional Rates approved by the Authority vide Order dated 20 May 2014 (based on COPT rates proposed by NMPT except for port dues) 29.08.2013 to 19.08.2015		NMPT Revised Proposal dated 21 July 2014	NMPT Final revised proposal dated 11 February 2015		TAMP Final Rates approved by the Authority vide Order dated 02 July 2015 20.08.2015 to 12.05.2016			
			Foreign	Coastal		Foreign	Coastal	Foreign	Coastal		
(i).	Wharfage charges	₹25 per tonnes	₹25.00 per MT	₹25 per MT	₹46.03 per GRT	₹35.00 per MT	₹35 per MT	₹25.00 per MT	₹25 per MT		
(ii).	Vessel related charges										
	(a).	Pilotage charges	US \$ 0.4259 per GRT	Foreign	Coastal	Foreign	Coastal	Foreign	Coastal	Foreign	Coastal
		(a). Upto 30,000 GRT		US \$ 0.4259 per GRT	₹11.69 per GRT	US\$ 57600 + \$ 1.54 per GRT over 30,000 GRT	₹2106300 + ₹56.37 per GRT over 30,000 GRT	US \$ 0.3228 per GRT	₹11.59 per GRT	US \$ 0.2515 per GRT	₹9.58 per GRT
		(b). 30,001 to 60,000 GRT									
		(c). 60,001 GRT and above									
	(b).	Pull back Tug Hire charges	US \$ 606.56 per Hour	US \$ 606.56 per tug hour or part thereof	₹16645.00 per tug hour or part thereof	Foreign @ US \$5345 per tug / hour US\$ 1.57 per GRT	Coastal ₹1,95,537 per tug / hour ₹57.55 per GRT	Foreign @ US \$1693 per tug / hour or part thereof	Coastal ₹61966 per tug / hour or part thereof	Foreign @ US \$1240.63 per tug / hour or part thereof	Coastal ₹47,275.45 per tug / hour or part thereof
	(c).	Port dues	US \$ 0.377 per GRT	US \$ 0.143 per GRT (as against US \$0.377 of COPT rate proposed by the Port)	₹2.32 per GRT	Foreign @ US \$ 0.377 per GRT	Coastal Not indicated	Foreign @ US \$ 0.332 per GRT	Coastal ₹12.17 per GRT	Foreign US \$ 0.143 per GRT	Coastal ₹2.32 per GRT

10. Subsequent to its Application dated 4 August 2014, 18 August 2015 and 3 September 2015 making its request for approval of Port dues at US\$ 0.377 per GRT, the NMPT vide its letters dated 7 October 2015 and 12 October 2015 has made submissions. The NMPT has reiterated in its letter dated 7 October 2015, the points already made in its letter dated 3 September 2015; hence those points are not repeated here again. The submissions made by the NMPT in its letter dated 12 October 2015 are summarised below:

- (i). The SPM was commissioned w.e.f. 29 August 2013 and at that time no prevailing rates were available in the SOR of NMPT for SPM facilities. Therefore, as provided under clause 2.12 in the guidelines of 2005 for fixation of tariff, NMPT requested TAMP for fixation of rates adopted in Cochin Port Trust in totality. This was also accepted by MRPL through a consent letter.
- (ii). TAMP passed an interim order on 20 May 2014 and accepted the provisional rates except Port Dues.
- (iii). In the final order dated 2 July 2015 at para 16(xi), it is stated that the final rate for SPM operations is, therefore, given effect prospectively. The rate approved will

come into effect after expiry of 30 days from the date of notification of the Order in the Gazette. The provisional rate approved by the Authority from 29 August 2013 or from the commencement of operation of SPM, whichever is earlier and levied by the COPT till the final rates approved in this Order come into effect is regularized as such. The period of validity of the provisional rates approved in the Order dated 20 May 2014 stands modified to this extent.

- (iv). Based on the above order, the shipping agents have made a claim for refund of port dues collected. The refund amount comes close to ₹29 crores.
- (v). NMPT would like to make representation to the TAMP on the following grounds.
- (vi). Relevant clause from Guidelines for fixation of tariff, 2005 is reproduced here below:

“2.12. When a new facility is commissioned or existing facilities are privatized by any port trust, the initial tariff to be allowed will not exceed the existing tariff level at the same port for comparable facilities. If such comparison is not available, prevailing tariff at comparable nearby port will be port will be considered is the references level. The initial tariff so adopted will be valid for the first year of operation where there revised tariff will be fixed based on the admissible cost and investment of the private operator. If it is established by the private operator that adopting the existing tariff of port trust will cause hardship to him in view of a higher level of investment made, then a separate cost based tariff will be allowed to him right the commencement of commercial operations.”
- (vii). From the above it can be seen that as per guidelines, if comparable tariff is not available in the port, prevailing tariff at comparable nearby port will be considered as the reference level. Accordingly the Port submitted a detailed cost based proposal for fixation of tariff for SPM operations / facility.
- (viii). Further, TAMP has, after realizing the practicality of adoption of rates, made provision in the order to address the hardship that may occur both to operator as well as Port.
- (ix). Para 4.8 of the provisional Order dated 20 May 2014 is reproduced below:

“4.8 Ordinarily, the rates approved by this Authority have prospective effect. But in the instant case, though the NMPT commenced commercial operations at SPM in August 2013, in the absence of any proposal from the port’s side well head of commencement of operation, there is no rate approved for the various SPM related services like pilotage, tug hire etc., offered by the port. Thus, a fait accompli situation is arisen before this Authority for prescribing the rate from the date of commercial operations at SPM. That being so, this Authority approves the provisional rates for SPM operations retrospectively from the date of commencement of commercial operations at SPM i.e. 29 August 2013 as reported by the NMPT and confirmed by MRPL. Clause 2.12. of the 2005 tariff guidelines while allowing to adopt the tariff of nearby port for comparable services for an initial period of one year, also stipulates that if, it is established that adoption of existing tariff would cause hardship to the operator, in view of higher level of investment made, then in that case the cost based final tariff would be allowed right from commencement of the operation, thus, if at the time of fixation of final rate it is found that adoption of COPT rates on provisional basis will cause hardship to the port, then fixation of final rate will be dealt with in an appropriate manner following Clause 2.12 of the 2005 tariff guidelines. Clause 2.12 of the tariff guidelines allows the interim tariff arrangement for period of one year. Hence, the said provisional rates are approved for a period of one year from 29 August 2013 or till the effective date of implementation of the Order disposing of the proposal filed by NMPT for fixation of final rate for SPM, whichever is earlier.”
- (x). As stated earlier, this Order is causing hardship to the port as huge financial outgo will be there from port. Port is already going through a bad phase of lower traffic and resultant lower income, port would like to request TAMP to kindly review its decision in respect of port dues.

- (xi). Port has already made a submission that there was no revision of Port dues for the past 5 tariff cycles and other Vessels Related Charges for the past 2 tariff cycles. Therefore, considering that rate as per clause 2.12 of Guideline for fixation of tariff, 2005 is in our opinion not fair. TAMP's attention is drawn to the tariff proposed by NMPT for Port Dues as per TAMP guidelines 2005 which works out to USD 0.332 per GRT which is more by 130% of existing tariff. Therefore, totally ignoring this rate may not be fair.
- (xii). The TAMP Order has made the interim rates applicable from the date of commencement of SPM operations i.e., 29.8.2013 and the rates of port dues have not been revised. Therefore there is demand from the shipping agents to refund the port dues charged to them as per COPT rates as per clause 2.12.
- (xiii). Therefore, it is again requested that TAMP take a considered view in this matter and issue the amendment to the order accordingly.
- (xiv). The application of rates should be as follows:

Sr. No.	Actual TAMP Order	To be modified
(i).	Fixation of provisional rate vide TAMP Order no.TAMP/17/2014-NMPT dated 20 May 2014	Fixation of modified provisional rate dated ----- adopting COPT's SPM rate in totality from 29 August 2014 to 20 August 2015.
(ii).	Fixation of provisional rate on port dues – USD 0.143 per GRT vide Clause no.4.6 of above Order.	Fixation of modified provisional rate on port dues – USD 0.377 per GRT vide Clause no.4.6.
(iii).	Fixation of Final rate vide TAMP Order no.TAMP/17/2014-NMPT dated 27/28 July 2015 Clause no.16 (xi) – The provisional rate approved by this Authority from 29 August 2013 or from the commencement of operation of SPM, whichever is earlier, and levied by the COPT till final rates approved in this Order comes into effect is regularized as such. The period of validity of the provisional rates approved in the Order dated 20 May 2014 stands modified to this extent.	Fixation of modified final Order under Clause no.16 (xi) – The modified provisional rate approved by this Authority from 29 August 2013 or from the commencement of operation of SPM, whichever is earlier, and levied by the COPT till the final rates approved in this Order comes into effect is modified as such. The period of validity of the modified provisional rates approved in the Order dated ----- stands modified to this extent.
(iv).	Fixation of final Order rate subject to Clause no 16 (vi) (a) of TAMP's letter No.TAMP/17/2014-NMPT dated 27/28 July 2015.	Fixation of modified final Order adopting detailed costing for port dues submitted to TAMP i.e. USD 0.322 per GRT from 1 August 2015.

11. The MRPL vide its letter No.MRPL/F&A/Port/SPM/2015-16 dated 29 October 2015 had made following submissions:

- (i). Subsequent to notification of interim rates for SPM Operation w.e.f. 29.08.2013 on 17.06.2014, the Authority had notified the final rates on 22.07.2015 comprising of wharfage and vessel related charges.
- (ii). The wharfage charges for the said facility are directly paid by MRPL, whereas vessel related charges are paid by shipping companies which are either in built in the freight charges being charged by shipping companies to MRPL or reimbursed separately by MRPL to shipping companies during the period when such rates were yet to be notified by TAMP.
- (iii). In view of notification of final rates by the Authority, the charges already collected by NMPT over and above the notified rates became refundable to shipping

companies and a portion of which in turn is to be refunded by shipping companies to MRPL.

- (iv). The shipping companies have informed that NMPT has represented the matter to TAMP regarding the rates; refunds would be processed only upon receiving reply from TAMP.
- (v). The NMPT has collected higher rates than the interim rates notified by TAMP thereby not giving cognizance to the TAMPs Order. Besides despite final rates getting notified, NMPT is yet to abide by the Order. NMPT has informed that the Authority Order is causing hardship to the Port since, refunds would have to be made to the port users. If the Port can take this stand perhaps the port users whenever there is increase in rates take the same stand.
- (vi). The Authority Order is an elaborate Order dwelling upon the all issues of concern in detail. Therefore, there is no merit in Port seeking a revision. The port would not have allowed the users to defer payments if the port users were to pay any additional amount consequent to the Order of the Authority.

MRPL has requested to issue direction to port to implement the Order of Authority without any delay.

12. The NMPT vide its e-mail dated 06 January 2016 has requested to consider the following points:

- (i). The SPM Facility was commissioned w.e.f. 29 August 2013 and at that time no prevailing rates were available in the SOR of NMPT for SPM facilities.
- (ii). NMPT vide its letter of even number dated 02 April 2014, enclosed the consent letter of M/s. MRPL dated 25 March 2014 conveying the acceptance of Cochin Port Trust SPM rate in totality.
- (iii). The Authority passed an interim Order vide No.TAMP/17/2014-NMPT dated 20 May 2014 by partially adopting Cochin Port Trust rates with retrospective effect from 29 August 2013.
- (iv). NMPT had filed a proposal dated 14 March 2014 for fixation of final rates for SPM operations along with detailed cost calculations as also the clarifications sought by the Authority from time to time.
[The cost calculation furnished by NMPT was for pilotage fee and pull back operations. No cost calculation was furnished for SPM.]
- (v). The Authority has passed final Order on the SPM rates vide Order No.TAMP/17/2014-NMPT dated 27/28 July 2015, prospectively. While passing the final Order, the Authority has noted under Clause 16 (xii), that NMPT has already filed a proposal for revision of its Scale of Rates under Tariff Policy, 2015 and once approved the validity of the rates approved for SPM operation are made co-terminus with the validity of the general scale of rates to be revised by TAMP.
- (vi). The Authority vide its letter No.TAMP/22/2015-NMPT dated 13 October 2015 have requested to modify the proposal of NMPT's revision of Scale of Rates by adopting the indexation for the ARR requirement and submit modified proposal for revision of Scale of Rates. In this context, it is submitted that the indexation will be equally applicable for the fixation of final rate of SPM also, since the proposal submitted to TAMP was based on 2012-2013 actual. The Authority is, therefore, requested to pass modified order by indexing the fixation of final rate for SPM by 6% for the year 2014-2015 and again by 3.82% for the year 2015-2016.

13. The Kanara Chamber of Commerce and Industry (KCCI) vide its letter No.2015-16/0314C dated 3 September 2016 while forwarding a copy of a letter dated 3 September 2016

addressed to NMPT in this regard, made following submission with a request to NMPT to settle the pending claims:

- (i). SPM operation was commissioned at NMPT during August 2013. As it was a new facility to NMPT and there was no relevant tariff available, NMPT fixed provisional tariff pending receipt of final order from TAMP. Accordingly, the following tariff was fixed vide their letter dated 13 February 2013:
Port Dues : USD 0.143 per GT
Pilotage : USD 1.760 per GT
Tug Hire : USD 1761.64 per hour
- (ii). The world over, SPM facility is created by investing huge amount to save on freight and other costs to factor economies of scale and pricing. In view these facilities are created outside port area deep in the sea, the tariff ought to have been much lower than the rates applicable for vessels calling at port (alongside berth). However, the above provisional tariff was much higher than the prevailing tariff for a vessel to call inside the port, which was contrary to the economies of scale.
- (iii). Meanwhile, the Authority passed an interim order on 20 April 2014 with retrospective effect from the date of commencement of the commercial operations of SPM i.e. 29 August 2013 and the details are as follows:
Port dues : USD 0.143 per GT
Pilotage : USD 0.4259 per GT
Tug Hire : USD 606.56 per hour
- (iv). Prior to this interim order, many vessels have been handled at this facility and the users were asked to pay charges at the provisional tariff fixed by NMPT. Further, users were asked to submit an undertaking to NMPT stating that final adjustment of the rates will be made once the TAMP issues final order in this regard.
- (v). After lot of exchange of communication and joint hearing with users and NMPT, the Authority passed final order on 20 July 2015 and the tariff as under:
Port dues : USD 0.143 per GT
Pilotage : USD 0.2515 per GT
Tug Hire : USD 1240.63 per hour.
- (vi). The Authority, in its final Order observed that there is not much variation between interim and final tariff fixed by the Authority. Though in terms of percentage there appears to be gap, a working of revenue estimation for a year at the interim rate and final rates shows that the variation is not significant so as to cause hardship to the NMPT and hence, final rate was given prospectively. However, it is evident from first two tariffs mentioned above there is a huge variation between the provisional tariff fixed by NMPT and interim fixed by the Authority. Accordingly, the Authority has allowed the users to claim refund from the NMPT as the said interim order was issued with retrospective effect from the date of commencement of SPM operation during August 2013. In line with the Authority Order, and as per the commitment given by NMPT to the Authority that, refund, if any, will be given after final tariff is determined, all users submitted their refund application to the NMPT immediately. In reply, the NMPT assured the users vide e-mail dated 27.08.2015 that refund applications are under process and will be settled soon.

However, on 04.09.2015, NMPT wrote a letter to all users stating that the Authority final order has brought great hardship to port and hence, NMPT has requested the Authority to modify the interim order. This is against the principle of equity and natural justice.
- (vii). It is quite amazing to note that the NMPT has been projecting the image of TAMP as independent regulatory body but when the order passed by TAMP goes against them, they do not honour the order and indulge in delay tactics.

- (viii). The KCCI reiterates that the Authority, before issuing final Order, conducted series of joint hearings between all stake holders and only after complying with due process, final order is issued. Hence, KCCI requested NMPT to instruct the necessary department to process all refund applications related to above issue and grant refund without any further delay.

14. In accordance with the consultative procedure prescribed, a copy of NMPT letter dated 12 October 2015 was forwarded to the concerned users/ user organisations vide our letter dated 9 December 2016 seeking their comments. The comments received from the MRPL vide its letters dated 13 December 2016 were forwarded to NMPT as feedback information. The NMPT did not respond.

15.1. A joint hearing in this case was held on 19 January 2017 at NMPT premises in Mangalore. At the joint hearing, the NMPT, MRPL and the concerned users/ organisation bodies have made their submissions.

15.2. As decided at the joint hearing, the NMPT was requested vide our letter dated 31 January 2017 to take action on the following points:

- (i). The MRPL has vide its letter dated 20 January 2017 furnished the arguments made by them at the joint hearing in writing. A copy of the MRPL letter dated 20 January 2017 was already forwarded to the NMPT. The NMPT to furnish its comments immediately.
- (ii). A copy each of the written submissions made by Mangalore Steamer Agents Association (MSAA), Kanara Chamber of Commerce & Industry (KCCI) at the joint hearing was already forwarded to the NMPT. The NMPT to furnish its comments thereon.

15.3. The NMPT vide its e-mail dated 20 February 2017 and letter dated 17 February 2017 has furnished its reply.

16. The NMPT vide its letter dated 27 January 2017 submitted in writing its submissions made at the joint hearing for modification of interim Order dated 20 May 2014. The submissions made by NMPT are brought out below:

- (i). The SPM facility was commissioned with effect from 29.08.2013. As it was a new facility commissioned, no rates were prevailing in the SOR of NMPT for SPM related Port services.
- (ii). NMPT vide letter dated 24 February 2014 filed a proposal seeking approval of rates for SPM operations on provisional basis till the final rates are notified by TAMP.
- (iii). Clause 2.12 of the 2005 Tariff Guidelines stipulates that when a new facility is commissioned, the initial tariff to be allowed shall be the rate applicable for comparable facilities at the port and if such comparison is not available, prevailing tariff at comparable nearby port can be considered as the reference level.
- (iv). TAMP vide its letter dated 25 February 2014 directed NMPT to obtain consent from MRPL for adoption of Cochin Port Trust rates in totality. NMPT, as per directions given by TMAP, has sought consent from MRPL for adoption of Cochin Port Trust rates in totality. MRPL vide their letter dated 25 March 2014 has given their consent for adopting the Cochin rates in totality and requested TAMP to pass provisional order accordingly.

[The NMPT was requested to forward consent of the concerned users for approval of provisional rates to comply with clause 2.17.1. to 2.17.3. of the Tariff Guidelines of 2005. No direction was given to NMPT.]

- (v). Accordingly, NMPT, vide letter dated 2 April 2014 filed a proposal seeking approval of provisional rates adopting rates prescribed in the existing SOR of Cochin Port Trust for SPM activities in totality.
- (vi). TAMP, however notified the interim rates vide Order dated 20 May 2014 WITHOUT adopting the rates prescribed in SOR of Cochin Port Trust in totality. In case of Port dues on SPM vessels, TAMP, instead of notifying rate existing in Cochin Port Trust of USD 0.377 per GRT/ entry, notified the rate existing in NMPT's SOR, i.e. USD 0.143 per GRT per entry for foreign vessels and ₹2.52 per GRT per entry for coastal vessel. NMPT immediately asked for review of Interim Order of TAMP.
- (vii). The Port in its detailed Cost plus proposal submitted to TAMP in the financial year 2014-15 calculations indicating the Port dues rate of \$0.332 per GRT. This rate for which Port is requesting from August 2013 onwards is still lower than prevailing Port dues charged by other major Ports in the vicinity during that time including Cochin Port Trust. Incidentally the rate charged by other ports are higher and commenced well before August 2013. In this context, the Authority should appreciate no major Port in vicinity is charging Port dues at \$0.143 per GRT.
- (viii). Until 2015 Tariff Guidelines, "cost plus return" based method was applicable in respect of SOR. NMPT had also submitted proposal in the Financial Year 2014-15, a "cost plus return" based rate for the purpose of computing Port dues for SPM vessels which worked out to USD 0.332 per GRT, as revision of SOR was long overdue. However, TAMP has not considered this FAIR proposal sent by NMPT to be adopted for SOR for SPM activities.
- (ix). SPM activity should be seen as a separate activity. Arrival of vessels at SPM cannot be compared to other normal vessels at berth as Port dues for vessels at SPM are charged on reduced GRT of the vessel unlike normal GRT applicable for other Vessel Related charges at berth.
- (x). There is no hard and fast rule existing in 2005 Tariff Guidelines that the port should wait till subsequent tariff cycle to revise an existing rate. If there is a genuine case, TAMP needs to consider the proposal sent by NMPT.
- (xi). TAMP, while fixing the provisional rate for SPM activity, approved the rate retrospectively from the date of commercial operations of SPM, i.e. 29 August 2013. This was done stating that it will cause hardship to the operators as per Clause 2.12 of the 2005 Tariff Guidelines.
- (xii). It is pertinent to note here that, TAMP has passed the final order vide order dated 2 July 2015.
- (xiii). It is pertinent to note here that, TAMP has passed the final order vide order dated 2 July 2015, i.e., almost 2 years after the date of commercial operations at SPM, with prospective effect.
- (xiv). Excerpt of Para 16(xi) of the final Order dated 2 July 2015 is reproduced below:

"Ordinarily the rates approved by this Authority have prospective effect. The NMPT has, however, sought approval of the final proposed rate from August 2013 i.e. from the commencement of the SPM operations. This Authority while approving the provisional rate adopting the rate of COPT as proposed by the NMPT has held that if, at the time of fixation of final rate, it is found that adoption of COPT rates on provisional basis will cause hardship to the port, then fixation of final rate will be dealt with in an appropriate manner following Clause 2.12 of the 2005 tariff guidelines.

From the analysis of the case, it is seen that the final wharfage rate and port dues approved by this Authority for SPM operations is same as approved provisionally

in May 2014. The only difference in the provisional rate and final rate is in respect of pilotage fee and pull back charges both of which fall under vessel related operations at the SPM. As regards pilotage fee the rate approved is found to be 41.00% lower than the provisional rates and for pull back operations it is 104.54% higher than the provisional rates approved by this Authority in May 2014 Order. Though in terms of percentage there appears to be gap, a working of revenue estimation for a year at the provisional rates and at the rates approved by this Authority based on the vessel traffic of 66 nos. and the GRT parameters and tug hours as considered in the calculation shows that the variation in absolute terms is not significant so as to cause hardship to the NMPT. The final rate for SPM operations is, therefore, given effect prospectively.”

- (xv). NMPT reiterates the fact that SOR rate for Port Dues was not revised for 5 tariff cycles (15 years).
- (xvi). While the TAMP has considered the hardships which were caused to operators, TAMP has not considered the hardships / Injustice to port due to fact of port dues remaining unrevised for very long period of time, namely 15 years.
- (xvii). NMPT has also repeatedly informed that this order has indeed caused hardship to the port in the form of substantial financial cash outflow.
- (xviii). The KCCI and its members have not accepted the TAMP Orders in 2010 from 2007 onwards as also the Order in 2014 w.e.f. 2012 onwards and have gone to court, whereas they are insisting that in case of SPM, TAMP's final order should be implemented.
[The Orders referred by NMPT relate to revision of lease rentals for allotment of Port land.]
- (xix). Port users are always taking stand that TAMP orders are always against them, but actual fact are otherwise. NMPT humbly submits the following points for TAMP's considerations. The port users are already enjoying the benefit of lower rates for vessel related charges due to non-revision of Scale of rates from 2007 onwards, i.e. for almost 10 years. NMPT is only requesting TAMP to notify the rate which is rightfully entitled to the port.
- (xx). Keeping all the facts stated above on mind, NMPT hereby again requests TAMP to modify, the provisional order to adopt Cochin Rate in totality and allow NMPT to charge port dues at **USD 0.3277** per GRT retrospectively, **i.e. from August 2013 onwards.**
- (xxi). We reiterate the point that there was no revision of Port Dues for the past 5 tariff cycles (15 years). Therefore, the port has reportedly stated considering the rate as per clause 2.12 of Guidelines for fixation of tariff, 2005 is not fair.
- (xxii). TAMP, in its final order dated 2 July 2015 mentioned that the validity of the rates approved for SPM operations are made co-terminus with the validity of general scale of rates to be revised and the said tariff for SPM will be reviewed in future along with the general revision of the SOR of the port. This above order of the TAMP, with due respect, is totally unfair and causes grave hardship and injustice to public body where public exchequers money is involved.
- (xxiii). We would like to draw TAMP's attention that NMPT had already filed a proposal for revision of the existing SOR of the port under the Tariff Policy, 2015 where all tariff items including the port dues is proposed for revision. SOR of NMPT was long overdue and TAMP kept on extending the validity of SOR which was drawn according to 2005 Tariff Guidelines.
- (xxiv). The latest proposal was sent by NMPT based on 2015 Tariff guidelines, wherein the general SOR of the port was increased, vide its Order dated 27 February 2016 and was made applicable only with effect from 13 May 2016.

- (xxv). The proposal was notified by TAMP after joint hearings, seeking clarifications and detailed deliberations with stakeholders. The Port Dues for foreign going vessels are fixed at USD 0.332 per GRT.
- (xxvi). NMPT had already sent the proposal for its general revision of SOR at the time when TAMP notified final order for SPM activities.
- (xxvii). The rate for port dues of USD 0.332 per GRT as proposed by NMPT was notified by TAMP in their final order dated 2 July 2015. Even though general revision of NMPT's SOR was due with effect from 1 April 2015, TAMP made such increase in rate applicable only from 13 May 2016. The reason behind such delay in notifying the rates is not justified.
- (xxviii). TAMP should have accepted NMPT's "cost plus return" rate of USD 0.332 per GRT which is still lower than the notified Cochin Port rate of USD 0.377 per GRT.
- (xxix). NMPT was not able to file a concrete "cost plus return" based proposal to TAMP for its general revision of SOR with effect from 1 April 2012 due to absence of professional personnel. TAMP, instead of revising the proposal ex parte, continued the then existing SOR for another tariff cycle, thereby denying the benefit of probable increase in SOR for subsequent tariff cycle (2012 to 2015). Thus the port users have already enjoyed benefit of lower rate due to non-revision of SOR even after the tariff cycle was over.
- (xxx). The rate of USD 0.143 per GRT per vessel granted by TAMP for port dues is based on the proposal sent 15 years ago and is, at present, the lowest among all the other neighboring major ports. Following is the Chart showing the port dues of other major ports:

Sl. No.	Particulars	Unit of Levy	Cochin Port	Kandla Port	Ennore Port	Tuticorin Port	Chennai Port
1	Port Dues	Rate per GRT	0.377	0.4255	0.424	0.2572	0.305

Considering the latest trend in inflation rates and increase in overall expenditure, charging the rate which is applicable 15 years ago is highly impractical and illogical and detrimental to the interest of the port.

- (xxxi). The existing demand for Refund from shipping agents would be substantially reduced if rate of port dues is rightfully considered at USD 0.332 per GRT with effect from August 2013.
- (xxxii). Therefore, NMPT, hereby requests the Authority to atleast allow NMPT to **adopt rate of USD 0.332 per GRT for Port Dues**, which is the notified rate as per the prevailing SOR of the port from May 2016, with effect from the commencement of commercial operation of SPM activities, i.e. August 2013.

PRAYER

NMPT requests TAMP to at least allow NMPT to **adopt rate of USD 0.332 per GRT for port dues from August 2013** and amend the Interim Order and consequent Final Order accordingly.

As per our prayer, following rates should be amended with effect from 29.08.2013

Sl. No.	Particulars	Unit of Levy	Foreign going vessel (in US\$)	Coastal Vessels (in ₹)
1	Port Dues	Rate per GRT	0.332	5.38

Therefore, we once again humbly request the Authority to kindly look into the matter and give fair decision in line with the provisions of the Guidelines.

17. Based on the scrutiny of the review application, the NMPT was requested to furnish information / clarification on a few points vide our letter dated 02 June 2017 by 07 June 2017, which was followed by reminder dated 15 June 2017. The NMPT has, vide its letter dated

06 July 2017, responded to the information/ clarifications sought by us. A summary of the information/ clarifications sought by us and the response of NMPT are tabulated below:

Sl. No.	Information/ Clarifications sought by us	Response from NMPT																																																																					
1.	The New Mangalore Port Trust (NMPT) in its review application dated 12 October 2015 read with its earlier letter dated 18 August 2015 to review the Interim Order No.TAMP/17/2014-NMPT dated on 20 May 2014 passed by the Authority has stated that port dues approved by the Authority at the then prevailing port dues of US\$ 0.143/ GRT prescribed in the SOR of NMPT as against US \$0.377 / GRT proposed by NMPT adopting the port dues of COPT has resulted in refund claims of ₹29.59 crores for the period between 29 August 2013 to 20 May 2014. The NMPT to furnish detail break up of amount of ₹29.59 Crores indicated by NMPT on account of the rate approved by the Authority for port dues for the period of 29 August 2013 to 20 May 2014.	Details relating to break up of ₹ 29.59 crores for the period 29 August 2013 to 20 May 2014 are furnished. [The details furnished by NMPT are for all the vessel related charges on SPM operation from 29.08.2013 to 02.06.2014 and not for Port dues alone.]																																																																					
(i).	The proposal of NMPT seeking Interim tariff was based on adoption of the rates prescribed in COPT for SPM operation including port dues. It was not based on any cost calculation. The port has now furnished the cost calculation in support of the proposed rate of US\$0.332 / GRT. In this regards, following points to be clarified by the NMPT:																																																																						
(a).	Cost calculation now furnished by NMPT is based on actuals of 2013-14. While approving general revision of scale of rates of NMPT, the Authority vide its Order no. TAMP/35/2010-NMPT dated 06 January 2012 has considered estimates for the years 2011-12 to 2014-15 which included estimates of various cost elements now captured by the NMPT in the calculation of port dues for SPM. In short, SOR of NMPT approved in the said Order is based on the cost position reflected in the cost statement which includes the estimates of all the cost items now given by NMPT in cost calculation for SPM port dues. The NMPT, therefore, to confirm and certify that there is no double counting of expenditure in view of the above approach adopted by the NMPT.	<p>The detail statement for the notified tariff rates by TAMP for the Vessel Related Charges for the 3 tariff cycles namely 2006-2009, 2009-2012 & 2012-2016 is furnished.</p> <table border="1" data-bbox="810 1420 1445 1899"> <thead> <tr> <th rowspan="2">Sr. No.</th> <th rowspan="2">Description of services</th> <th rowspan="2">Unit</th> <th colspan="2">Rate for Tariff Cycle 2006-2009</th> <th colspan="2">Rate for Tariff Cycle 2009-2012</th> <th colspan="2">Rate for Tariff Cycle 2012-2016</th> </tr> <tr> <th>Foreign</th> <th>Coastal</th> <th>Foreign</th> <th>Coastal</th> <th>Foreign</th> <th>Coastal</th> </tr> </thead> <tbody> <tr> <td>(i).</td> <td>Port dues</td> <td>Per GRT</td> <td>USD 0.143</td> <td>₹2.32</td> <td>USD 0.143</td> <td>₹2.32</td> <td>USD 0.143</td> <td>₹2.32</td> </tr> <tr> <td></td> <td>Pilotage</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td>Upto 30000 GRT</td> <td>Per GRT</td> <td>USD 0.320</td> <td>₹8.55</td> <td>USD 0.320</td> <td>₹8.55</td> <td>USD 0.320</td> <td>₹8.55</td> </tr> <tr> <td>(ii).</td> <td>30001-60000 GRT</td> <td>Per GRT</td> <td>USD 9,600 + USD 0.256</td> <td>₹2,56,608 + 6.84/ GRT</td> <td>USD 9,600 + USD 0.256</td> <td>₹2,56,608 + 6.84/ GRT</td> <td>USD 9,600 + USD 0.256</td> <td>₹2,56,608 + 6.84/ GRT</td> </tr> <tr> <td></td> <td>Above 60000</td> <td>Per GRT</td> <td>USD 17,280 + USD 0.224</td> <td>₹4,61,894 + 5.99/ GRT</td> <td>USD 17,280 + USD 0.224</td> <td>₹4,61,894 + 5.99/ GRT</td> <td>USD 17,280 + USD 0.224</td> <td>₹4,61,894 + 5.99/ GRT</td> </tr> <tr> <td>(iii).</td> <td>Berth hire charges</td> <td>Per Hr per GRT</td> <td>0.21 Cents</td> <td>₹e.0.05</td> <td>0.21 Cents</td> <td>₹e.0.05</td> <td>0.21 Cents</td> <td>₹e.0.05</td> </tr> </tbody> </table> <p>It can be seen from above notified rates that the VRC of NMPT have remained unchanged for 3 tariff cycles. There was no revision of VRC whatsoever and a status-quo on the rates was maintained by the</p>	Sr. No.	Description of services	Unit	Rate for Tariff Cycle 2006-2009		Rate for Tariff Cycle 2009-2012		Rate for Tariff Cycle 2012-2016		Foreign	Coastal	Foreign	Coastal	Foreign	Coastal	(i).	Port dues	Per GRT	USD 0.143	₹2.32	USD 0.143	₹2.32	USD 0.143	₹2.32		Pilotage									Upto 30000 GRT	Per GRT	USD 0.320	₹8.55	USD 0.320	₹8.55	USD 0.320	₹8.55	(ii).	30001-60000 GRT	Per GRT	USD 9,600 + USD 0.256	₹2,56,608 + 6.84/ GRT	USD 9,600 + USD 0.256	₹2,56,608 + 6.84/ GRT	USD 9,600 + USD 0.256	₹2,56,608 + 6.84/ GRT		Above 60000	Per GRT	USD 17,280 + USD 0.224	₹4,61,894 + 5.99/ GRT	USD 17,280 + USD 0.224	₹4,61,894 + 5.99/ GRT	USD 17,280 + USD 0.224	₹4,61,894 + 5.99/ GRT	(iii).	Berth hire charges	Per Hr per GRT	0.21 Cents	₹e.0.05	0.21 Cents	₹e.0.05	0.21 Cents	₹e.0.05
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		<p>various Orders given by TAMP from 2006 onwards. Further, tariff rate for port dues has not been revised for the past 15 years (5 tariff cycles). Hence, it is again reiterated that the question of doubt counting of cost elements raised by TAMP does not arise at all.</p>
(b).	<p>The NMPT to furnish incremental cost incurred by the port towards services rendered by the port for levy of port dues in respect of SPM operations for the period of 29 August 2013 till the interim Order approved on 20 May 2014 came into force.</p>	<p>The detail cost statement submitted as proposal to TAMP is again furnished.</p> <p><i>[The NMPT vide its letter dated 11 February 2015 had furnished cost calculation for fixation of port dues for final rates for SPM. The cost calculation furnished by NMPT is discussed in later paragraph.]</i></p> <p>It can very well be seen from the furnished cost statement that the port is incurring much higher cost for all the VRC activities as compared to the notified rates in 2012. However, the TAMP interim Order dated 20 May 2014 and the final Order dated 02 July 2015 states to consider the costing proposal for port dues will be re-examined by TAMP in the new tariff cycle. Accordingly, the port dues were revised w.e.f. May 2016 only. Hence, this decision is not based on the facts of the case and on equity.</p> <p>TAMP in the clarification sought in the general tariff revision proposal as per 2015 guidelines vide their letter no.TAMP/22/2015-KPT dated 31 March 2015 asked the port to give information whether the port's actual performance for the tariff cycle 2012 to 2015 had exceeded the projections earlier submitted to TAMP. For this the port has already stated that the port's actual performance was much lower than the projected traffic and hence had incurred loss during the said tariff cycle.</p>
(c).	<p>One of the components of expenditure considered by the port in its cost calculations for port dues includes dry docking expenses of tugs / ML / PLs at ₹55,800,000/- Crores for the year 2013-14. The Audited Annual Accounts of the year 2013-14, however, report the dry docking expenses of tugs / ML / PLs as Nil. Thus, this amount considered by NMPT is not as per Audited Account of 2013-14 and hence may be excluded.</p>	<p>The expenses towards dry docking of tugs / ML / PLs are appearing in separate code under "Operation and Maintenance of Tugs" in the operating expenditure and not under the Account code "Dry Docking expenses". During the year 2013-14, ₹ 5.58 crores were incurred towards dry docking of tugs. Therefore, dry docking charges paid to Cochin Shipyard Limited are considered based on the ledgers pertaining to Marine Department from Audited Books of Accounts of the port. No element of cost has been taken which is not part of Audited Books of Accounts of the port. Hence, the observation made by TAMP that the dry docking expenses needs to be excluded is not factual.</p>
(d).	<p>As regards depreciation of floating crafts considered at ₹63,201,503/- in the cost calculation of SPM operation, NMPT to furnish details of floating crafts deployed by NMPT exclusively for SPM operations towards port dues services.</p>	<p>Depreciation of floating crafts are to be recovered from all Vessel Related activities provided by the port in the form of total GRT of the vessels handled by the port. It is to be noted that vessels earlier coming to the berth before SPM activities were commenced were subsequently diverted to SPM and hence the total number of vessels handled by the port still remains the same despite the new SPM activity. Therefore, the said cost element needs to be recovered from all the vessels coming to the port including SPM.</p>

(e).	As regards, ₹377,755,465/- considered by the port towards maintenance dredging and Marine survey expenses in cost calculation of port dues, the port to indicate the actual cost incurred by the port towards maintenance dredging at SPM operation facility which is reported to be located 17 kms. away from the base line of Port. The port to also confirm whether any maintenance dredging is done by the port for the SPM operations along with details of the increase in the draft due to such maintenance dredging at SPM facility.	All vessel related expenses are to be recovered from all vessel related activities / services in the form of GRT of vessels handled at Berth and SPM. It cannot be linked only to SPM activity or activity at the berth. When rate per GRT is arrived at for each vessel related activity, the total GRT of all vessels likely to come to port including SPM is to be taken into account. When proposal is made to TAMP, the cost of entire vessel related activities is to be recovered from entire GRT of the vessels coming into port for particular year. As maintenance dredging is marine related activity, the same has to be recovered from the GRT of vessels handled by the port as a whole including SPM.
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18. 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 the relevant parties. These details will also be made available at our website <http://tariffauthority.gov.in>.

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

- (i). The review application dated 12 October 2015 filed by the New Mangalore Port Trust (NMPT) is to review the rate of Port dues provisionally approved in the Order passed by this Authority vide Order No.TAMP/17/2014-NMPT dated on 20 May 2014 in respect of vessels calling at the Single Point Mooring (SPM) facility till fixation of final rates of Port dues.
- (ii). To trace the circumstances that has led the NMPT to file its review application dated 12 October 2015, it is to state that the NMPT vide its letter dated 24 February 2014 had first filed a proposal based on its own calculations seeking approval of rates for SPM operations on provisional basis till the final rates are determined by this Authority. The NMPT subsequently filed a revised proposal dated 2 April 2014 seeking approval to adopt the rates prescribed for SPM operations at the Cochin Port Trust on provisional basis for Port dues, Pilotage, Tug hire charges and Wharfage, with the consent of the MRPL for adoption of the COPT rates on provisional basis. That being so, this Authority vide its Order No.TAMP/17/2014-NMPT dated on 20 May 2014 approved provisional rates for the SPM facility as proposed by the NMPT except for Port dues. As regards Port dues, this Authority approved Port dues as prescribed in the then prevailing SOR of the NMPT for POL vessels i.e. USD 0.143 per GRT per entry for foreign-going vessel and ₹2.52 per GRT per entry for coastal vessel for the following reasons as recorded in the Order dated 20 May 2014:

“4.6. The NMPT has proposed to adopt the port dues of US\$0.377 per GRT per entry for foreign-going vessel as per the port dues prescribed in the existing Scale of Rates of the COPT. Port dues is a fee for entry of vessel into the port. At COPT, the port dues for Crude oil tankers at SBM has been prescribed at par with the port dues for tanker vessels at the berths. The existing Scale of Rates of NMPT prescribes uniform port dues for all categories of vessels referred as “Ships/ Steamers”. Since port due is a fee for entry of the vessel and following the analogy followed in COPT, it is found appropriate to prescribe port dues for SPM vessel at par with port dues applicable in the existing SOR of NMPT for POL vessels i.e. USD 0.143 per GRT per entry for foreign-going vessel and ₹2.52 per GRT per entry for coastal vessel.”

The provisional rates were approved by this Authority from the date of commencement of the commercial operations i.e. 29 August 2013 for a period of one year from 29 August 2013 or till the effective date of implementation of the

Order disposing of the proposal filed by NMPT for fixation of final rate for SPM, whichever is earlier.

(iii). The core issue raised by NMPT revolves around the rate of Port dues approved in the interim Order at the then prevailing Scale of Rates of NMPT @ US\$ 0.1432/ GRT/ entry as against the proposal of NMPT to adopt the port dues prescribed in the then prevailing Scale of Rates of COPT at US\$ 0.377/ GRT/ entry from the date of commencement of operation at SPM. However, subsequently, the NMPT has, vide its letter dated 27 January 2017, requested to review the interim order and to accord approval for US\$ 0.332 per GRT from date of commencement of operations i.e. from 29 August 2013 till the final rates came into force from 20 August 2015. The NMPT in its original review application of 12 October 2015 has also sought to modify port dues in the interim Order at US\$ 0.377/ GRT. During the proceeding of the case, the NMPT has also requested that the port dues in the final rates for SPM in the Order dated 2 July 2015 may be modified as US\$ 0.322/ GRT/ entry from 1 August 2015. Thus, the NMPT has kept on changing its proposal from time to time.

(iv). The final rates for SPM were approved by this Authority in its Order No.TAMP/17/2014-NMPT dated 2 July 2015. In the said Order and for the reasons stated in para 16(vi)(a), this Authority has approved port dues for SPM vessel at par with port dues prescribed in the then existing SOR of NMPT for POL vessels i.e. USD 0.143 per GRT per entry for foreign-going vessel in line with the decision taken while approving the provisional rates for SPM operations. In the said Order, this Authority has observed that NMPT had already filed a proposal for revision of the existing SOR of the port under the Tariff Policy, 2015 where all tariff items including the port dues were proposed for revision by the NMPT. The said proposal of the NMPT was being processed separately. This Authority has in the said Order held that the port dues to be approved by this Authority in the general revision of the SOR of the NMPT, would automatically apply to the vessels arriving at the SPM also.

In the proposal for the general revision of SOR filed by the NMPT under Tariff Policy 2015, this Authority has, vide Order No.TAMP/22/2015-NMPT dated 27 February 2016, approved the proposal of the port for revision of port dues at US\$ 0.332 per GRT per entry for foreign-going vessel for SPM operations at par with port dues proposed for Ships/ Steamers, berthed at NMPT berths.

(v). Kanara Chamber of Commerce and Industry (KCCI) and Mangalore Steamer Agents Association (MSAA) have opined that Review of Order is not maintainable. The KCCI and MSAA have opined that this Authority should not have considered the request of the port for review of decision taken in the interim Order passed by this Authority.

The KCCI and MSAA are requested to note that the tariff for SPM was fixed by this Authority following the Tariff Guidelines of 2005 which was applicable for Major Port Trusts including NMPT at that material point of time. Clause 3.3.1. of the Tariff guidelines of 2005 allows the Major Port Trust (or the BOT operators) to file review application for review of the tariff Order passed by this Authority. It is relevant here to note that some BOT operators like TM International Logistics Limited, South West Port Limited, Visakha Container Terminal Pvt. Ltd. and also few Major Ports including NMPT had in the past filed application for review of the Order passed by this Authority which had been entertained and this Authority has passed tariff Orders disposing their respective review applications. There was no extraordinary circumstances warranting deviation from the established procedure. This Authority is bound to follow the Tariff guidelines of 2005, which is a Policy direction of the Government of India.

(vi). The main grounds of the NMPT in the current review application seeking review of the Port dues approved in the interim Order are as follows:

- (a). Port dues of NMPT was not revised for the last 15 years. Port was not a loss making unit. But, TAMP should have increased the port dues.
 - (b). Port dues for SPM vessels was not fixed by this Authority as per cost details provided by NMPT. Cost based rate worked out by the port was not considered by TAMP in the interim Order and final Order.
 - (c). The proposal of NMPT seeking approval for the interim rate for SPM operations adopting COPT rates in totality is in line with the provision prescribed in clause 2.12 of 2005 guidelines and also has the consent of MRPL conveying the acceptance of Cochin Port Trust SPM rate in totality. This Authority, however, in the interim Order dated 20 May 2014 has partially accorded approval based on COPT adopted rates. Port dues is not approved at the COPT rate.
 - (d). The interim Order passed by this Authority partially adopting COPT rates has brought great hardship to the port as an amount of ₹29.59 crores has been claimed as refund by seven Vessel related agents for the 53 vessels for the period between 29.8.2013 to 02.06.2014 based on this Authority's interim Order.
- (vii). Each of the main contentions of the port is discussed in the following paragraphs:

Contention of the NMPT:

- (a). **Port dues of NMPT was not revised for the last 15 years. Port was not a loss making unit. But, TAMP should have increased the port dues.**

Our Analysis:

- (i). The Major Port Trusts and this Authority both were governed by the Tariff Guidelines of 2005 for fixation of Scale of Rates until announcement of the Tariff Policy of 2015 by the Ministry of Shipping for regulation of tariff of the Major Port Trusts which came into effect from 13 January 2015.

The Tariff Guidelines of 2005 issued by the (then) Ministry of Shipping, Road Transport and Highways (MSRTH) prescribes a cost plus return model wherein admissible cost and 16% return on capital employed is taken into consideration while approving the tariff of Major Port Trusts, including NMPT. Even prior to Tariff Guidelines of 2005, this Authority followed the cost plus return approach based on the Guidelines adopted in the Work Shop held in 1998 at Chennai.
- (ii). In each of the general revision of SOR of NMPT approved by this Authority vide Order No.TAMP/18/2001-NMPT dated 9 August 2001, No.TAMP/42/2005-NMPT dated 11 May 2006 and No.TAMP/34/2010-NMPT dated 6 January 2012, this Authority has followed the cost plus return approach prescribed in the Guidelines while approving the Scale of Rates of the port. The tariff increase/ decrease granted by this Authority is based on the deficit/ surplus, as the case may be, reflected in the cost statement attached to each of these Orders and is elaborately dealt in the respective Orders.
- (iii). In the tariff Order of August 2001, port had proposed 25% increase in vessel related charges, including port dues. The overall cost statement reflected a surplus position of 2.17%. Within the overall surplus position, the vessel activity was in deficit

and the wharfage (cargo activity) was in surplus. This Authority in the said Order held that if the vessel related charges are increased, wharfage income thereof will have to be correspondingly reduced. This Authority had, for reasons elaborately recorded in the said 2001 tariff Order, stated that the deficit position obtaining in the vessel related charges will be cross-subsidised by the estate activity and cargo handling activity and since cargo related rates are not adjusted for a downward revision, this Authority decided not to grant increase in the vessel related charges in the 2001 Tariff Order.

During the next general revision Order of 11 May 2006, NMPT had proposed uniform port dues for ships and steamers (and minor rationalisation in pilotage fee and Berth hire) which were approved by this Authority in the tariff Order of 2006.

In the tariff Order of January 2012, the NMPT itself had proposed status quo in vessel related charges (except minor modification in pilotage fee and shifting charges) which was approved as proposed by the port.

The statement made by the port that this Authority has considered the hardships which were caused to operators, but has not considered the hardships to port due to fact of port dues remaining unrevised for very long period of time, namely 15 years are not validated by records and are contrary to the tariff Orders quoted above.

As regards the point made by NMPT in the current review application that this Authority should have ex-parte revised the Scale of Rates without the port seeking revision in the 2012 proposal, it is to state that the question of this Authority revising the rates on its own when the port itself had sought status quo in the port dues does not arise.

- (iv). This Authority was bound to follow the cost plus return model while determining Scale of Rates which was followed in all tariff cases of NMPT. In short, the tariff increase/ decrease granted by this Authority is elaborately dealt with in each of these orders. In each of the general revision Order passed by this Authority, tariff has been fixed under cost plus return model where by tariff is fixed enabling the port to meet the admissible cost plus 16% ROCE entitled to the port as per the Tariff Guidelines of 2005.
- (v). In view of the above position, the proposal of the NMPT seeking review of port dues for SPM from 29 August 2013 on the ground that port dues was not revised for last 15 years is not found to be in line with the Tariff Guidelines of 2005 and hence does not merit consideration.

Contention of the NMPT:

- (b). **Port dues for SPM vessels has not been fixed by the Authority as per cost details provided by NMPT. Cost based rate worked out for port dues was not considered by the Authority in the interim Order and final Order.**

Our Analysis:

- (i). The tariff proposal dated 2 April 2014 for approval of provisional rate was for adoption of COPT rates including port dues. Therefore, question of consideration of cost details for approval of

interim rate does not arise. The port also did not furnish any cost details for interim rate. As regards the cost details for Port dues for approving final rates, it is brought out below.

- (ii). The NMPT in this review application dated 12 October 2015 has stated that it had filed a proposal dated 14 March 2014 for fixation of final rates for SPM operations along with detailed cost calculation.

The NMPT in its original proposal of March 2014 for fixation of all final rates had proposed port dues at US\$ 0.377/GRT adopting the port dues prescribed by this Authority in the SOR of COPT. In the proposal of 21 July 2014 as well the NMPT had proposed port dues at US\$ 0.377/GRT. This can be seen in the table presented in para 6.2. of the Order dated July 2015. No detailed costing was furnished by the port in March 2014 as regards port dues as brought out in para 12.2. (ii)(b)(ii) of the Order dated 2 July 2015. Only while filing the (final) revised proposal dated 11 February 2015, the NMPT furnished computation for arriving at port dues at US\$ 0.332/ GRT as brought out in the said para of the Order dated 2 July 2015 and reproduced here for ease of reference:

Sr. No.	Particulars	Amount
(i).	Depreciation on Marine Assets for 2013-14	476,12,615.00
(ii).	Depreciation of Floating Crafts earlier considered as CH Activity	63,201,503.00
(iii).	Maintenance Dredging and marine survey expenses	377,755,465.00
(iv).	Pollution Control expenses	5,274,544.00
(v).	Water Supply to Shipping	5,081,058.00
(vi).	Fire Fighting Expenses	60,719,817.00
(vii).	Operation & Maintenance of Navigational Aids	14,270,927.00
(viii).	Administration & General Expenses	18,540,106.00
(ix).	TOTAL COST	592,456,035.00
(x).(a).	ADD: MGA Apportioned Cost- 6% of MGA Expenses	42,394,524.00
(b).	ADD: Dry Docking Expenses of Tugs/ML/PLs	55,800,000.00
(xi).	TOTAL COST	690,650,559.00
(xii).	TOTAL GRT HANDLED IN 2013-14	34,054,755.00
(xiii).	Rate per GRT (in ₹) (xi)/(xii)	20.28
(xiv).	Rate per GRT (in UD \$) (\$1=₹61) (for foreign going vessel)	0.332

- (iii). Thus, the statement of the NMPT that port has furnished detailed cost calculation in March 2014 proposal for fixation of final rate is not the factual position as regards Port Dues.

As regards Pilotage and pull back operations, the port did furnish cost calculation in March 2014 which was modified by the port in July 2014 and further revised in the final revised proposal dated 11 February 2015. The pilotage fee and pull back charges for SPM approved by this Authority are based on the cost calculation furnished by the port and modified for reasons explained in the Order dated 2 July 2015.

- (iv). This Authority in the interim Order and in the final Order has elaborately dealt with the reasons for according approval of Port Dues for SPM operations at the same level of Port Dues already prescribed by this Authority in the then prevailing SOR of the port:

- (a). The relevant para 4.6. as regards Port Dues approved in the Interim Order No.TAMP/17/2014-NMPT dated 20 May 2014 is already reproduced in earlier paragraphs.
- (b). The relevant para 16(vi)(a) as regards Port Dues in the final Order No.TAMP/17/2014-NMPT dated 2 July 2015 is reproduced below:

“The NMPT in its initial proposals of March 2014 and July 2014 had proposed the port dues as prescribed in the SOR of the COPT at US\$0.377 per GRT. Subsequently, in the final revised proposal, the NMPT has proposed port dues at US\$0.332 per GRT. For this purpose, the NMPT has considered apportioned cost items like Depreciation on Marine Assets, Depreciation on Floating Crafts, Maintenance Dredging and marine survey expenses, Pollution Control expenses, Water Supply to Shipping, Operation & Maintenance of Navigational Aids, Administration & General Expenses, apportioned Management and General Overheads and dry docking expenses of tugs/ mooring launches/ pilot launch and spread over the total GRT of vessels of SPM.

The MRPL, and the Kanara Chamber of Commerce and Industry (KCCI) both have objected the proposed port dues which leads to an increase of 132% from the existing provisional port dues. The only argument put forth by the NMPT is that Port dues of NMPT has not been revised from 13.06.2006 onwards and is overdue for revision. Notwithstanding the objection of MRPL and KCCI and NMPT's comments thereon, it is relevant to mention that port dues is a fee for entry of a vessel into the port. The apportioned cost components now considered by the NMPT for arriving at the proposed port dues like marine survey, port conservancy, pollution control, harbour patrol as a safety & security measure, dredging etc for SPM operations are already captured in the General revision proposal of the NMPT approved vide Order no.TAMP/34/2010-NMPT dated 6 January 2012 while approving the port dues. The existing Scale of Rates of NMPT already prescribes uniform port dues for all categories of vessels referred as “Ships/ Steamers” at US\$ 0.143 per GRT for foreign-going vessel and ₹2.32 per GRT for coastal vessel. It is relevant here to mention that for SPM operations commissioned by Bharat Petroleum Corporation Limited - Kochi Refineries Limited (BPCL-KRL) at Cochin Port Trust, the port dues prescribed in SOR of the COPT is made applicable for vessels arriving at the SPM as per the proposal of the port. At the Kolkata Port Trust, same rate of port dues is levied for operations at Haldia and Kolkata. Likewise, the same rate of port dues is applicable at Mumbai Port Trust for operations at its Docks and the Jawahardeep where marine oil terminal is located. Since Port dues is a fee for entry of vessels, the rate of Port dues for SPM vessels cannot be different from the other vessel categories.

Hence, adopting the analogy followed in COPT, it is found appropriate to prescribe port dues for SPM vessel at par with port dues applicable in the existing SOR of NMPT for POL vessels i.e. USD 0.143 per GRT per entry for

foreign-going vessel and ₹2.52 per GRT per entry for coastal vessel. This is in line with the decision taken while approving the provisional rates for SPM operations.”

- (v). It can thus be seen that even during the fixation of final rate, this Authority has dealt with the cost statement filed by NMPT as regards port dues. This Authority has made certain pointed observation regarding the cost statement furnished by the NMPT on port dues. Hence, the point made by the port that this Authority has not considered the cost statement filed by NMPT in the final Order does not reflect the factual position.
- (vi). In the current exercise, it was again brought to the notice of the port that while approving general revision of scale of rates of NMPT in January 2012, this Authority vide its Order No.TAMP/35/2010-NMPT dated 06 January 2012 has considered estimates for the years 2012-13 to 2014-15 which included estimates of various cost elements now captured by the NMPT in the calculation of port dues for SPM based on 2013-14 actuals. The NMPT was, therefore, requested to confirm and certify that there is no double counting of expenditure in view of the above approach adopted by the NMPT. The port has given a vague reply stating that as there was no revision of Vessel related charges from 2006 onwards, question of double counting of cost elements does not arise. The reason given by the port does not address the specific point raised by us during the proceeding.
- (vii). In the current exercise, in order to review the port dues as sought by the port, the NMPT was requested to furnish incremental cost incurred by the port towards services rendered by the port for levy of port dues in respect of SPM operations for the period of 29 August 2013 till the interim Order approved on 20 May 2014. The port has, however, furnished the same cost statement as submitted by the port earlier without furnishing details of incremental cost incurred by the port.
- (viii). It is seen from the cost calculation for the rate of Port dues at US\$ 0.332 furnished by the NMPT that, the port has considered the actual expenses reported in the Annual Accounts under vessel related activity in the year 2013-14 at ₹59.24 crores, apportioned Management and General Overheads and the Dry Dock Expenses and assessed the total revenue requirement at ₹69.06 cores which is spread over total GRT for the year 2013-14 at 34054755 and has arrived at per GRT port dues of ₹20.28 (i.e. ₹690650559/34054755 GRT). Applying exchange rate of 1US\$ - ₹61, the port has arrived at port dues of 1US\$ - 0.332/ GRT/ entry for foreign going vessel. The following are observed on an analysis of the cost calculation furnished by NMPT:
 - (a). Since the cost calculation furnished by the NMPT was based on Annual Accounts, the Annual Accounts was referred. It is seen from the actual expenditure reported in the Annual Accounts for the year 2013-14 that the port has considered the entire depreciation at ₹4.76 crores, maintenance dredging expense at ₹37.77 crores, pollution control expense of 0.52 crores, water supply to shipping at 0.50 crores, Administration and general expenses at ₹1.84 crores in the cost calculation, amongst other items of expenditure. These expenses reported in the Annual Accounts of the port are for entire vessel related activity of the port viz. berth hire services, pilotage services,

anchorage services and Port dues and not confined to Port dues alone. Hence, the approach adopted by the NMPT of considering the entire vessel related for calculation expenses of only port dues is not found to be correct.

- (b). More pertinent point is that this Authority while fixing the general SOR of the port in the Order No.TAMP/35/2010-NMPT dated 06 January 2012 has considered all the above said items of cost, though on estimate basis.

Consideration of the same expenses which were allowed while fixing the entire SOR of the NMPT for arriving at port dues for SPM operations will result in allowing the same expenses twice. The argument of the port that since Port dues was not revised since 2006, considering these expenses for port dues is not double counting cannot technically hold good as a valid argument.

In the said 2012 Order, the rate of Port dues was approved by this Authority at US\$ 0.143/ GRT as proposed by NMPT, including other tariff items taking into account all the admissible cost and 16% return maintaining revenue neutral position. Tinkering now with the rate of port dues alone then approved will tantamount to allowing return more than 16% which will not be in line with the provisions of 2005 tariff guidelines.

Unlike Pilotage fee and Pull back charges for SPM operations the cost calculations of which reflect the incremental cost incurred by the port, the port has not been able to furnish incremental cost, if any, incurred by the port towards rendering services of entry of vessel to the port for which port dues is levied despite specific request. Even Kanara Chamber of Commerce and Industry (KCCI) and others have stated that port has not incurred any additional expenditure while rendering port entry service. The KCCI has pointed out that port dues are same for vessel at SPM and for tanker jetties at all Indian Ports.

- (ix). In view of the above, the plea of the port to fix Port Dues at either US\$ 0.332/ GRT or US\$ 0.377/ GRT has no justification.
- (x). It is also relevant here to state that the port vide its letter No.TAMP/FIN/REV/TAMP/SPM dated 24 February 2014 to this Authority while seeking approval for fixation of rates for SPM has itself brought out that, since port dues is a levy charged on vessels, the rate applicable at general berth at US\$ 0.143 per GRT will be made applicable to SPM also. Thus, the port itself had admitted then that port dues should be \$ 0.143 GRT earlier as applicable in the port for other vessels. However, subsequently, in April 2014 proposal, the port had proposed to adopt Port Dues as prescribed in the COPT for SPM operations.
- (xi). As regards the point made by NMPT that then prevailing Port dues of NMPT is lower than the rate charged by other major Ports in the vicinity during that time including Cochin Port Trust, it is to state that Scale of Rates of each Major Port Trust including NMPT is approved by this Authority following the tariff guidelines of 2005. The Scale of Rates are fixed so as to enable the Major Port Trusts

to meet the admissible cost plus 16% return as per the cost plus formula prescribed in the Tariff Guidelines of 2005. The cost position, traffic, scale of investments, timing of investments and operating expenditure varies from port to port and hence comparison of one tariff item drawn by the NMPT in isolation without taking into consideration holistic view is not correct.

Contention of NMPT:

- (c). **The proposal of NMPT seeking approval for the interim rate for SPM operations adopting COPT rates in totality is in line with the provisions prescribed in clause 2.12 of 2005 guidelines and also has the consent of MRPL conveying the acceptance of Cochin Port Trust SPM rate in totality. The Authority, however, in the interim Order dated 20 May 2014 has partially accorded approval based on COPT adopted rates. Port Dues is not approved at the COPT rate by the Authority.**

Our Analysis:

- (i). Clause 2.12 of the tariff Guidelines stipulates that when a new facility is commissioned or existing facilities are privatized by any port trust, the initial tariff to be allowed will not exceed the existing tariff level at the same port for comparable facilities. If such comparison is not available, prevailing tariff at comparable nearby port will be considered as the references level.
- (ii). The operations at SPM commissioned w.e.f. 29 August 2013. As stated earlier, at that point of time, no rates were available in the SOR of NMPT for SPM facilities.

Since SPM was a new facility at the port, this Authority found the proposal of the NMPT seeking approval of interim rate for SPM adopting the rate prescribed for similar operations in Cochin Port Trust in line with the provision prescribed in clause 2.12 of the 2005 guidelines. This Authority, therefore, approved the consented proposal of the NMPT for levy of pilotage charges and pull back charges adopted as per the then prevailing SOR of the COPT as proposed by the port rates on provisional basis except port dues.

As regards Port dues, this Authority has explicitly brought out in para 4.6. of the interim Order that the then existing approved Scale of Rates of NMPT already prescribed uniform port dues for all categories of vessels referred as "Ships/ Steamers". Port due is a fee for entry of the vessel.

Clause 2.12 of the tariff guidelines is relevant for new facility commissioned. As regards port dues, the port is not rendering new service to SPM vessel as it is only a fee for entry of vessel to the port.

As already stated in the fixation of final tariff for SPM operation commissioned by Bharat Petroleum Corporation Limited - Kochi Refineries Limited (BPCL-KRL) at Cochin Port Trust, the port dues prescribed in SOR of the COPT was made applicable for vessels arriving at the SPM as per the proposal of the port. At the Kolkata Port Trust, same rate of port dues is levied for operations at Haldia and Kolkata. Likewise, the same rate of port dues is applicable at Mumbai Port Trust for operations at its Docks and the Jawahardeep where marine oil terminal is located. Since Port

dues is a fee for entry of vessels, the rate of Port dues for SPM vessels cannot be different from the other vessel categories as sought by the port. Even, MRPL, KCCI and other users have stated during the proceeding of the review application that port dues for vessels at SPM facilities and tanker vessels at port berths are same in the Indian Ports.

- (iii). Flowing from the above position and also the position obtained at the other Major Ports as explained above, there is no apparent error as such pointed out by the NMPT while approving the port dues as prescribed in its own SOR for SPM vessels.
- (iv). The port has, in the review application, stated that the MRPL has given the consent to COPT rates in toto and hence requested this Authority to review the port dues and approve as proposed by the port at COPT rates. In this regard, it is to state that the MRPL during proceeding of this review application has stated that MRPL gave acceptance for adoption of COPT rates provisionally till final rates are notified by TAMP for SPM. This position of MRPL is also brought out in para 2(v)(c) of the interim Order and para 2(v)(c) final Order.

In fact, during the proceeding of the review application the MRPL has requested this Authority to direct NMPT to refund the port charges collected over and above the TAMP notified rates immediately along with interest.

Contention of NMPT:

- (d). **The interim Order passed by partially adopting COPT rates has brought great hardship to the port as an amount of ₹29.59 crores has been claimed as refund by seven Vessel related agents for the 53 vessels for the period between 29.8.2013 to 02.06.2014 based on the Authority's interim Order.**

Our Analysis:

- (i). The NMPT in its review application dated 12 October 2015 read with its earlier letter dated 18 August 2015 to review the Interim Order No.TAMP/17/2014-NMPT dated on 20 May 2014 passed by this Authority has stated that port dues approved by this Authority at the then prevailing port dues of US\$ 0.143/ GRT prescribed in the SOR of NMPT as against US \$0.377/ GRT proposed by NMPT (adopting the port dues of COPT) has resulted in refund claims of ₹29.59 crores for the period between 29 August 2013 to 20 May 2014. The NMPT was, therefore, requested to furnish detail break up of amount of ₹29.59 Crores indicated by NMPT on account of the rate approved by this Authority for port dues for the period of 29 August 2013 to 20 May 2014.
- (ii). In this regard, the port vide its letter dated 6 July 2017 has stated that details relating to break up of ₹29.59 crores for the period 29 August 2013 to 2 June 2014 is furnished.

On perusing the break up furnished by the port, it is seen that the port has furnished details for "vessel related charges" collected by the port for SPM operations for the period 29 August 2013 to 2 June 2014 showing refund amount as ₹29.59 crores. The details furnished by the port do not establish that the entire amount of

refund arises on account of Port dues for the period of 29 August 2013 to 2 June 2014 furnished by the port.

(iii). The MRPL, which has invested in the SPM, has brought out by its letter dated 13 December 2016 that the NMPT initially collected higher rates than the interim rates approved by this Authority from the date of commissioning of the SPM, pending approval of this Authority. The NMPT did not refute the statement made by the MRPL. Likewise, the Kanara Chamber of Commerce and Industry (KCCI) vide its letter dated 3 September 2016 has brought out that in the absence of approved rates for SPM operations, the NMPT fixed rates, on provisional basis, for pilotage at US\$ 1.760 per GRT and Tug hire charges at US\$ 1761.64 per hour, which the users were asked to pay, as against the provisional rates of US\$ 0.4259 per GRT towards Pilotage and US\$ 606.56 per hour towards Tug hire charges. We do not have the reaction of NMPT in this regard. It emerges from the statements made by MRPL and KCCI that reported refund claims have arisen not only on account of Port dues but also on account of Pilotage and Tug hire charges.

(iv). The breakup furnished by the port does not mention about total GRT of vessels for the period 29 August 2013 to 2 June 2014. The number of vessels reported by NMPT for the period 29 August 2013 to 2 June 2014 is 53. In the absence of vessel wise GRT furnished by the port, the average GRT as furnished by the port during fixation of final rate is considered which works out to 77867. So, the total GRT for 53 vessels works out to 4126951. Average exchange rate for the period 29 August 2013 to 2 June 2014 is 1 US\$ - ₹61.72. Considering the differential port dues viz. the difference between the rate collected by the port at US\$ 0.377 vis-à-vis the then prevailing port dues of NMPT at US\$ 0.143 GRT as approved in the interim and final Order, and the total GRT for 53 vessels and applying the average exchange rate for the period 29.08.2013 to 02.06.2014 at 1US\$ = ₹61.72, the excess revenue collected by port works out to ₹5.96 crores and not ₹29.59 crores stated by port which relates to vessel related charges as a whole. A working in this regard is tabulated below:

No. of vessels for the period 29.08.2013 to 02.06.2014 as furnished by the port	Total GRT (53 vessels * avg GRT/ vessel 77867)	Provisional Port Dues proposed by NMPT vide its email dated 2.4.2014 as per COPT rate US\$ /GRT	Provisional Port Dues approved as per Order No.TAMP/17/2014-NMPT dated 20.5.2014 (Interim Order) US\$ / GRT	Difference in rate (in US\$)	Differential in terms of revenue collection by port for the period 29.08.2013 to 02.06.2014 (US\$ 0.234* ₹61.72 * 4126951 GRT)
53	4126951	0.377	0.143	0.234	59603407
Differential revenue from port dues (₹ in crores)					5.96

[Note: Since the calculation is based on average GRT, the amount of ₹5.96 crores is subject to change as per the actual GRT of 53 vessels. ₹5.96 crores is only an indicative amount.]

(v). As regards the point made by the NMPT that refund claimed by users is causing hardship to the port, it is relevant to state that the mandate of this Authority is to fix the Scale of Rates of the Major Port Trusts and BOT operators operating there at. The interim as well as final Order elaborately deals with the approval granted by this Authority as regards port dues.

As can be seen from the analysis on the grounds of NMPT for review of the Port Dues approved by this Authority in the interim Order, there is no error apparent on record pointed out by the NMPT to review the interim Order as regards Port dues.

The MRPL in the current exercise has stated that the May 2014 interim Order is in order. The KCCI, the MRPL and the MSAA have requested this Authority to direct the NMPT to refund the excess amount collected by the port. As rightly stated by the MSAA and the KCCI the review application of the NMPT to review the rate of Port dues approved in the interim Order has mainly emerged on account of refund arising due to non application of rates by the port as per the interim Order of this Authority. Refund matter completely falls under the domain of the concerned port Trust.

- (viii). The review application of NMPT originally sought that the Port Dues of US\$ 0.143 per GRT approved by this Authority in the interim Order from the date of commencement of operations till the date to interim Order was passed i.e. from 29 August 2013 to 19 May 2014 may be reviewed and approved at the COPT adopted rate of US\$ 0.3777 per GRT as proposed by the port. Subsequently, the NMPT vide its letter dated 27 January 2017 has requested this Authority to allow NMPT to adopt rate of USD 0.332 per GRT for port dues from August 2013 and amend the Interim Order and consequent Final Order accordingly.

The Port dues of US\$ 0.332 was approved by this Authority under Tariff Policy of 2015. Therefore, this rate cannot be applied retrospectively from 29 August 2013 when a rate of Port dues at US\$ 0.143/ GRT was in force which was fixed following the applicable tariff guidelines of 2005.

- (ix). The port has quoted part of para 16(xi) of the Order No.TAMP/17/2014-NMPT dated 2 July 2015 relating to fixation of final rate for SPM operations and stated that the point made by this Authority in the final Order passed that *“though in terms of percentage there appears to be gap a working of revenue estimation for a year at the provisional rates and at the rates approved by this Authority based on the vessel traffic of 66 nos. and the GRT parameters and tug hours as considered in the calculation shows that the variations in absolute terms is not significant as to cause hardship to the port”* is not correct.

While approving the final rate for SPM, it has been stated in the said para of the Order that the final wharfage rate and port dues approved by this Authority for SPM operations are same as approved in the tariff approved provisionally in May 2014. The only difference in the provisional rate and final rate is in respect of pilotage fee and pull back charges both of which fall under vessel related operations at the SPM. As regards pilotage fee, the said para of the Order states that rate approved is found to be 41.00% lower than the provisional rates and for pull back operations it is 104.54% higher than the provisional rates approved by this Authority in May 2014 Order. Though in terms of percentage there appeared to be gap, a working of revenue estimation for a year at the provisional rates and at the rates approved based on the vessel traffic of 66 nos. and the GRT parameters and tug hours as considered in the calculation showed that the variations in absolute terms is not significant as to cause hardship to the port. The port, while making the statement that it is incorrect, has not substantiated it with figures. A detailed statement showing the provisional rates and the rates approved in the Order dated July 2015, and the revenue estimate based on the vessel traffic of 66 nos. and the GRT parameters and tug hours as considered in the July 2015 Order which shows that the variations in absolute terms is not significant as to cause hardship to the port in this regard is attached as **Annex.**

- (x). (a). There is one another point made by the NMPT which is not related to fixation of interim and final rates for SPM operations approved in May 2014 and July 2015 Orders, which is dealt below:

The NMPT, referring to the Order passed in February 2016 under Tariff Policy 2015 for general revision of its Scale of Rates, has stated that indexation should be equally applicable for the fixation of final rate of SPM also, since the proposal submitted to TAMP was based on 2013-14 actuals. The port has requested this Authority to pass modified order by indexing the fixation of final rate for SPM by 6% for the year 2014-2015 and again by 3.82% for the year 2015-2016.

This matter is not relevant to the interim Order passed by this Authority for SPM for which the port has filed the review application. However, it is to state that as per the Tariff Policy 2015, the Port has to estimate the Annual Revenue Requirement based on the actual (admissible) expenditure for the years 2011-12 to 2013-14 + 16% Return. As per the said Tariff Policy 2015, the port has the flexibility to draw its own SOR within the estimated ARR. As brought in the table in para 18(v) of the General revision Order dated 27 February 2016, the Annual Revenue Requirement has been assessed based on 2011-12 to 2013-14 actuals. The estimated ARR has then been indexed by 6% for the year 2014-15 and 3.82% for the year 2015-16 and the indexed ARR is ₹353.13 crores. Since the general Scale of Rates under Tariff Policy 2015 was fixed in February 2016, the indexation in the ARR was already captured for the three years, covering the year 2013-14. The port has drawn the SOR which includes rates for SPM. The revenue estimated by the port at proposed rates is at ₹350.19 crores which has been considered as proposed by the port. Thus, the matter of indexation referred by the port has already been captured in the ARR. As regards indexation in SPM tariff it will be governed by the relevant para 16(xxi) of the general revision Order which is linked to performance standards.

- (b). One another point made by NMPT is that this Authority, in its final order dated 2 July 2015 has prescribed the validity of the rates approved for SPM operations co-terminus with the validity of general scale of rates to be revised and the said tariff for SPM will be reviewed in future along with the general revision of the SOR of the port. The port has said the said order of the TAMP is totally unfair and causes grave hardship and injustice to the port.

In Para 16(xii) of the July 2015 Order this Authority, for reasons stated, has prescribed the validity of the rates for SPM co-terminus with the validity of the general scale of rates to be revised by this Authority so that this tariff can be reviewed in future alongwith the general revision of the SOR of the NMPT at one go. The general revision Order revising the SOR of the NMPT was approved by this Authority vide Order No.TAMP/22/2015-NMPT dated 27 February 2016 wherein the proposal of Port to revise the port dues for SPM to US\$0.332/ GRT/ entry as proposed for other vessel category was approved as proposed by the port in line with the decision of this Authority in July 2015 Order. As regards Pilotage fee and Pull back operations for SPM, the proposal of the port was approved in toto. The NMPT has always been admitted admissible cost plus 16% return as per Tariff Guidelines of 2005 or 2015. Hence, the point made by NMPT about hardship and injustice to the port has no basis.

20. In view of the detailed analysis on the contentions of NMPT given above, there is no merit found in the review application filed by the NMPT to review the rate of port dues approved by this Authority in the interim Order or for that matter in the final Order. The review application

has arisen mainly on account of refund claims made by users/ user association on account of the reported excess collection made by the port.

21. In the result, and for the reasons given above, and based on collective application of mind, the request made by the NMPT in its review application dated 12 October 2015 to review the rate of Port dues for SPM approved by this Authority at US\$ 0.143/ GRT in interim Order dated 20 May 2014 and final Order dated 24 June 2015 is not agreed to by this Authority.

(T.S. Balasubramanian)
Member (Finance)

Annex

Statement of revenue estimate for tug hire and pilotage approved in the interim Order and final order of July 2014

Sr. No.	Particulars	No of vessels as considered in final Order	Total GRT as considered in final Order	Order No. TAMP/17/2014-NMPT dated 20.5.2014		Rate approved by TAMP		Increase / Decrease (in %)
				Provisional rate	Revenue estimate at provisional rate	Rate approved in the final Order US\$/ GRT	Revenue estimate at final rate	
I.	Pilotage fee							
(a)	Estimate for Total no of vessels and GRT as considered in the final Order	66	5130000	0.4259	138760903.17	0.2515	81940284.45	-74.85%
(b)	Total revenue estimate from pilotage (Rs. In crores)				13.88		8.19	-40.95%
II	Tug hire revenue estimation							
Sr. No.	Particulars	No of vessels as considered in final Order	Total hours as considered in final Order	Provisional rate US\$/ tug hour	Revenue estimate at provisional rate	Rate approved in the final Order US\$/ tug hour	Revenue estimate at final rate	Increase / Decrease (in %)
(a)	Tug hire charges							
(b)	Estimate for revenue from tug hire charge for total tug hours as considered in the final Order	66	1690.50	606.56	65,122,498.58	1240.63	133,199,097.57	104.54%
(c)	Total Revenue estimate from tug hire (Rs. in crores)				6.51		13.32	
III	Total Revenue estimate from Foreign going vessel from pilotage fee and tug hire charge from SBM vessels (Rs. in crores)				20.39		21.51	5.52%
IV	Difference in revenue as per rates approved in interim Order and final Order (Rs. in crores)						1.13	

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/88/2016-NMPT	:	Application received from New Mangalore Port Trust (NMPT) for review of provisional rate of Port dues approved in the Order passed by Authority on the proposal of NMPT for fixation of provisional rates of Port dues, Pilotage charges, Wharfage and Tug hire charges with retrospective effect from the date of commencement of the commercial operations i.e. 29 August 2013 for handling of vessels at Single Point Mooring (SPM) facility at NMPT.
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1. The comments received from the MRPL are given below:

Sr. No.	Comments received from the users/ user organisations/ prospective bidders																								
1.	Mangalore Refinery and Petrochemicals Limited (MRPL)																								
(i).	The SPM facilities have been created mainly to facilitate to handle the crude pertaining to Indian Strategic Petroleum Reserves Ltd. (ISPRL), who procure and store crude oil for nation's strategic purpose. Our Company (MRPL) has made full investment in SPM facilities to build this national asset considering importance of the project. If, the GoI directs MRPL to draw crude oil from ISPRL's storage caverns, MRPL would be able to handle higher crude quantity through SPM and optimize the benefit of the investment.																								
(ii).	The SPM facility has started generating additional revenue to the port without any investment by NMPT. MRPL has been incurring port charges for SPM facilities despite making entire investment in the SPM project, in addition to incurring the port charges pertaining to Jetty No.10 and 11.																								
(iii).	<p>During initial discussions with NMPT, pending finalization and notification of rates for SPM by Tariff Authority for Major Ports (TAMP), the port charged the adhoc rates which are much higher than the Cochin Port (COPT) rates and the rates prevailing at its own Jetty, to the port users since inception of SPM, i.e. from August 2013. The ad hoc rates thus collected by port are much higher than the interim and final rates notified by TAMP. The rates charged by port and as notified by TAMP, at a glance, are as under:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Type of Charges</th> <th style="width: 10%;">COPT rates</th> <th style="width: 10%;">Ad hoc Rate collected by NMPT</th> <th style="width: 20%;">Interim Rate Notified by TAMP in May / June 2014 (w .e.f August 2013)</th> <th style="width: 15%;">Final Rates notified by TAMP July 2015</th> <th style="width: 10%;">Revised SoR notified by TAMP in April 2016</th> </tr> </thead> <tbody> <tr> <td>Pilotage (\$ per GRT)</td> <td align="center">0.4259</td> <td align="center">0.611</td> <td align="center">0.4259</td> <td align="center">0.2515</td> <td align="center">0.2515</td> </tr> <tr> <td>Tug hire (\$ per Hr.)</td> <td align="center">606.56</td> <td align="center">2,098</td> <td align="center">606.56</td> <td align="center">1,240.63</td> <td align="center">1,240.63</td> </tr> <tr> <td>Port dues* (\$ per GRT)</td> <td align="center">0.377</td> <td align="center">0.377</td> <td align="center">0.143</td> <td align="center">0.143</td> <td align="center">0.332</td> </tr> </tbody> </table> <p>* The interim and final rates of Port Dues notified by TAMP, which is \$0.143 per GRT is in line with the rates prevalent at Jetty during the applicable Tariff cycle. Hence, comparison with COPT rates as represented by NMPT is not justified.</p>	Type of Charges	COPT rates	Ad hoc Rate collected by NMPT	Interim Rate Notified by TAMP in May / June 2014 (w .e.f August 2013)	Final Rates notified by TAMP July 2015	Revised SoR notified by TAMP in April 2016	Pilotage (\$ per GRT)	0.4259	0.611	0.4259	0.2515	0.2515	Tug hire (\$ per Hr.)	606.56	2,098	606.56	1,240.63	1,240.63	Port dues* (\$ per GRT)	0.377	0.377	0.143	0.143	0.332
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Port dues* (\$ per GRT)	0.377	0.377	0.143	0.143	0.332																				
(iv).	The Tariff Fixation guidelines stipulate that when a new facility is commissioned the initial tariff will not exceed the existing Tariff level at the same port or the comparable rates prevailing at nearby port. However, NMPT has not charged the rates prevailing rates either at its own Jetty or as existing at nearest port, i.e. COPT. Instead NMPT had charged adhoc rates based on its own internal workings and continued to charge the same rates until notification of interim rates by TAMP without taking cognizance of the COPT notified rates. The TAMP's order regarding interim rates is effective from August 2013 and valid till it was revised in July 2015. Once, the tariff rates are notified by TAMP, which is binding on both the port and users, NMPT's representation claim to match all the rates to COPT rates during the interim period is not justified at this juncture. Hence, NMPT may be directed to refund the port charges collected over and above the TAMP notified rates immediately along with interest. It is also pertinent to mention that NMPT would have enforced the rates immediately upon notification had the same been favorable to the port.																								

(v).	MRPL once again submit before TAMP to consider their views as above and advise NMPT to honour the interim rates notified by TAMP vide order dated 20.05.2014 (w.e.f. August 2013) and the final rates notified vide TAMP order dated 02.07.2015 and arrange refund at the earliest.
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2. A joint hearing in this case was held on 19 January 2017 at the NMPT premises in Mangalore. At the joint hearing, the NMPT, MRPL and the concerned users/organisation bodies have made the following submissions:

New Mangalore Port Trust

- (i). Made a Power Point Presentation of the proposal.
- (ii). SPM was commissioned on 29 August 2013. We did not have tariff when SPM operations commenced in August 2013. Hence, we filed proposal to adopt COPT rate for SPM in February 2014.
- (iii). MRPL was the main contributor for SPM. Port facility was in respect of Pilotage, Tug Services and entry to the port.
- (iv). We obtained consent of Mangalore Refinery Petrochemical Limited (MRPL) to adopt Cochin Port Trust (COPT) rate and submitted to TAMP in March 2014.
- (v). TAMP approved interim rate in May 2014. TAMP did not approve COPT rate in toto. TAMP did not approve our proposal for adoption of Port dues as per COPT SOR. TAMP approved Port Dues for SPM as per port dues prescribed in our SOR. Our grievance is that Port dues was not approved as sought by us.
- (vi). In the final Order approved in July 2015, the port dues was kept the same. The rates for other items at SPM was approved based on the costing. The final rate was given prospective effect. Validity of final rates was made coterminus with the validity of the general Scale of Rates.
- (vii). For Port Dues, TAMP did not fix rate as per cost details provided by us.
- (viii). Port dues of port is not revised for the last 15 years. Port was not a loss making unit. But, TAMP should have increased the port dues.
- (ix). From August 2013 itself, port dues may be revised at US\$ 0.377/GRT as proposed by port.
- (x). All our funds are deployed for infrastructure facilities.
- (xi). Our rates are lowest compared to other port.
- (xii). Refund will be there but it will come down if port demand is accepted.

The Mangalore Refinery and Petrochemical Limited

- (i). We are the ultimate payer of all dues as per TAMP Order.

- (ii). The port vide its letter No.TAMP/FIN/REV/TAMP/SPM dated 24 February 2014 to TAMP while seeking approval for fixation of rates for SPM brought out that, since port dues is a levy charged on vessels , the rate applicable at general berth at US\$ 0.143 per GRT will be made applicable to SPM also. Thus, the port itself has admitted then that port dues should be \$ 0.143 GRT earlier as applicable in the port for other vessels.
- (iii). The port vide its letter dated 12 March 2014, to MRPL, asked MRPL to give consent to Cochin rates in toto.
- (iv). The MRPL gave acceptance for adoption of COPT rates provisionally till final rates are notified by TAMP for SPM.
- (v). Tariff guidelines of 2005 states that when new facility is developed or existing facility is privatized, the initial tariff should not exceed tariff available, for comparable facility. TAMP Order of May 2014 is in order.

The Mangalore Steamer Agents Association

- (i). No tariff was available when SPM operated. Port should have then approached TAMP for rates.
- (ii). Port dues is a fee for entry of vessel. It will not vary for SPM vessels. Port dues rate was available in SOR of Port and hence same should be applied.
- (iii). The refund arises on account of pilotage fee levied by port at US\$1.76/GRT/hour which was higher.
- (iv). While fixation for final rates, 2 tugs were considered. We requested to consider cost of tugs for use of other purposes by the port. Port gave assurances that two tugs are deployed only for SPM operations and not for other operations. But, in reality SPM tugs are being used by the port.
- (v). Review Order is not maintainable as it arises only on account of refund issue.
- (vi). TAMP may direct port to refund the excess collected by the port.
- (vii). We request to settle the matter at the earliest.

New Mangalore Port Trust (NMPT)

- (i). We exclusively hired 2 tugs for SPM operations. Since, 2 tugs are hired exclusively only for SPM, it was considered for costing for SPM tariff.
- (ii). When TAMP has fixed rates for all items, based on costing we request TAMP to consider input cost of port dues based on costing. We have given calculation of port dues for SPM.

- (iii). It is not correct to say port cannot seek review of the Order passed by TAMP. Port has the right to seek review of the Order. Let TAMP re-look into it.
- (iv). In Chennai Port, port dues are different for different harbours.

Mangalore Refinery Petrochemicals Limited (MRPL)

- (i). We want to give the points made at the joint hearing in writing to TAMP and to the port.

The Mangalore Steamer Agents Association

- (i). TAMP has passed Order as per the guidelines.

3. The summary of the written submissions made by MRPL, KCCI and MSAA at the joint hearing and reply furnished by NMPT thereon is tabulated below:

Sr. No.	Comments received from the users/ user organisations/ prospective bidders	Comments of NMPT
1.	Mangalore Refinery and Petrochemicals Limited (MRPL)	
(i).	<p>Vide letter No.NMPT/FIN/REV/TAMP/SPM dt 24.02.2014 to TAMP while seeking approval of TAMP to adopt rates in point No 2(ii) NMPT brought out that</p> <p>QUOTE: Port Dues: Since Port dues is a levy charged on vessels without identifying any service the rate applicable for general berths as per scale of rates(0.143 us\$ per GRT) will be made applicable to the vessels calling at SPM also. No further change is required in this regard.</p> <p>UNQUOTE: While passing the final order dated 20.05.2014, TAMP duly recognized the same and correctly fixed the rate of port dues at the same rate of US\$ 0.143 per GRT.</p>	<p>M/S MRPL is basing its observation on NMPT letter dated 24.02.2014. It is stated in this context that a subsequent letter has been issued to TAMP dated 2nd April 2014 based on MRPL's consent letter dated 25.03.2014.</p> <p>Hence this subsequent letter to TAMP will override the earlier letter given to TAMP in February 2014.</p> <p>The port has gone for appeal relating to the Interim order of TAMP dated 20.05.2014 to apply the cochin rates including Port dues in totality for which MRPL had given its consent as per the direction of TAMP.</p> <p>When TAMP gave its final order dated 02.07.2015, the hardship caused to NMPT was not addressed and hence NMPT is well within its rights to go on appeal against the order.</p>
(ii).	<p>The fixation of rate of Port dues by TAMP and as conveyed vide order dated 20.05.2014 is as per the guidelines for fixation of tariff, 2005. The point 2.12 of the guidelines reads as under</p> <p>QUOTE: when a new facility is commissioned or existing facilities are privatized by any port trust, the initial tariff to be allowed will not exceed the existing tariff level at the same port for comparable facilities. If such comparison is not</p>	<p>The port has indeed followed the TAMP Guidelines when it submitted comprehensive cost based proposal for fixation of tariff for all the services provided with regard to SPM operations right from commencement as there was no rates for services rendered at SPM.</p>

	<p>available prevailing tariff at comparable nearby port will be considered as the reference level.....</p> <p>UNQUOTE: Accordingly, it is re-iterated that the fixation of the rate by TAMP in respect of Port dues vide order dated 20.05.2014 is in accordance with the guidelines.</p>	<p>The cost based rate worked out for port dues was not considered by TAMP in the interim order nor in the final order.</p> <p>The port due rate for SPM in COPT was not considered in the interim order.</p>																
(iii).	<p>NMPT in their letter dated 12.10.2015 to TAMP have stated that MRPL has accepted the COPT rates in totality through a consent letter. In this regard, we wish to draw reference to the few letters as below between MRPL and NMPT</p> <p>(i) Letter dated 12.03.2014 of NMPT to MRPL requesting MRPL to convey acceptance for adoption of the COPT rates in totality pending final notification of the SPM rates by TAMP</p> <p>(ii) MRPL's reply letter dated 25.03.2014 to NMPT which clearly stated as under</p> <p>QUOTE: Pending final notification of the SPM rates as mentioned in your letter in totality..... It may also be construed as provisional till such time, the rates are notified by the TAMP for vessels berthing in SPM.</p>	<p>The genuine hardship caused to the port was not addressed and hence a request has again been made to TAMP to address the hardship caused to the public body as public exchequer's money is involved</p>																
(iv).	<p>From the aforesaid facts and compliance requirement of TAMP guidelines, port's request to re-consider the order date 20.05.2014 passed by TAMP is against TAMP's guidelines. Accordingly, TAMP is requested not to consider the request of the port for review of decision taken by TAMP</p>																	
2.	<p>Kanara Chamber of Commerce and Industry (KCCI) and Mangalore Steamer Agents Association</p>																	
(i).	<p>A new facility, SPM was commissioned at NMPT on 29.08.2013 to handle crude imports consigned to Mangalore Refinery and Petrochemicals Ltd. (MRPL), subsidiary of ONGC. The project was completely funded by MRPL at a cost of Rs. 1044 Crores. As there was no tariff available at the time of commissioning this facility, NMPT fixed ad hoc rates and subsequently, TAMP also fixed provisional rates vide its interim order. The details as under:</p> <table border="1"> <thead> <tr> <th>Tariff</th> <th>Port dues</th> <th>Pilotage</th> <th>Tug hire</th> </tr> </thead> <tbody> <tr> <td>As hoc rate by NMPT dtd. 14.01.13</td> <td>USD 0.143</td> <td>USD 1.76</td> <td>USD 1761.64</td> </tr> <tr> <td>TAMP interim Order dtd. 17.06.14</td> <td>USD 0.143</td> <td>USD 0.4259</td> <td>USD 606.56</td> </tr> <tr> <td>TAMP final Order dtd. 20.07.15</td> <td>USD 0.143</td> <td>USD 0.2515</td> <td>USD 1240.63</td> </tr> </tbody> </table>	Tariff	Port dues	Pilotage	Tug hire	As hoc rate by NMPT dtd. 14.01.13	USD 0.143	USD 1.76	USD 1761.64	TAMP interim Order dtd. 17.06.14	USD 0.143	USD 0.4259	USD 606.56	TAMP final Order dtd. 20.07.15	USD 0.143	USD 0.2515	USD 1240.63	<p>Permission For SPM was given by the Port authority to facilitate handling of Very Large Crude Carriers in the public interest and in the interest of trade to promote Economies Of Scale, thereby reducing cost of handling liquid cargos. However the intention of granting permission for SPM facilities was to increase the total tonnage of throughput at SPM and Berths. However it is seen that the traffic which was earlier coming to berth has been diverted to SPM and there is no overall increase in value of throughput, particularly during the tariff cycle 2012 to 2015. In the process the port has lost revenue as the projected wharfage income from the dedicated berths could not be achieved as the traffic normally coming to the berths was diverted to SPM. The port's SOR was not having any rates for SPM operations when the operations started.</p>
Tariff	Port dues	Pilotage	Tug hire															
As hoc rate by NMPT dtd. 14.01.13	USD 0.143	USD 1.76	USD 1761.64															
TAMP interim Order dtd. 17.06.14	USD 0.143	USD 0.4259	USD 606.56															
TAMP final Order dtd. 20.07.15	USD 0.143	USD 0.2515	USD 1240.63															
(ii).	<p>The TAMP approved provisional rates in its interim order retrospectively from the date of commencement of commercial operation at SPM i.e., 29.08.2013. Accordingly, users submitted the application for refund to NMPT. The TAMP has clearly stated that this position has arisen</p>	<p>NMPT had requested TAMP in writing to review the Interim Order immediately after notification of Interim Order. Thus it was not an afterthought. The port thereafter again asked for modification of the interim order after the final order was received in July</p>																

	<p>because the NMPT has not filed the proposal for fixation of tariff for SPM operations well ahead of commencement of operation as advised by TAMP and therefore NMPT should look into refund request made by users. However, all the applications were kept pending stating that NMPT is awaiting confirmation from TAMP on this issue. In the meantime, NMPT wrote to TAMP requesting them to modify the interim order so as to avoid refund to users.</p>	<p>2015. The port was charging SOR Rates as per the interim order after same was notified.</p> <p>Question of refund or otherwise will arise only when appeal made by NMPT is finally decided by TAMP.</p>
(iii).	<p>(a). The said tariff was fixed after completion of due consultation process with all stakeholders. The views and comments of all stakeholders and NMPT was considered prior passing the order by TAMP. We strongly believe that the order was not in favour of the trade and industry for a simple reason that the SPM facility was fully funded by MRPL. The factor of 'Zero Investment' by NMPT was not considered while finalizing the said tariff.</p>	<p>As regards the SPM operations and investment point raised by KCCI and MSAA is concerned, NMPT incurs the following operational cost:</p> <p>NMPT has hired two tugs EXCLUSIVELY for SPM operations with hire charges of ₹2,08,000/- per day per tug excluding taxes and fuel.</p>
	<p>(b). Though the order was arbitrary, the port users chose to accept the order as law abiding citizens of this country</p>	<p>NMPT also deutes pilots exclusively for SPM activities by providing extra allowance for activities conducted by them in SPM.</p>
(iv).	<p>However, to our surprise TAMP has accepted application of NMPT to review the tariff approved by TAMP itself. It is a matter of concern, when the authority which passes an order after complying with relevant guidelines, accepts the review application. We are of the opinion that TAMP is setting a wrong precedent in the tariff fixation procedure by allowing this application. With this, the trade is of opinion that the order passed by TAMP in all previous proposals may be erroneous and should be subjected to review as most of the order have been awarded against the trade.</p>	<p>The port has also installed new VTMS costing ₹17 Crores and same is also being used for SPM operations.</p> <p>Oil spill facility in case of leakage/accident is also in place.</p> <p>The period taken for discharge of cargo in the SPM is also factored in the costing of rates.</p> <p>While it is a fact that capital cost of SPM facility was not made by the port, however for SPM operations, NMPT incurred the above mentioned operating cost. Accordingly, the proposal for SOR of SPM does not contain the element of any capital cost not incurred by the Port.</p> <p>Thus the observations made by KCCI and MSAA are not correct.</p> <p>The port is charging the notified rate as indicated in the interim order dated 20th May 2014 and the final order dated 2nd July 2015 and following the TAMP order issued in letter and spirit, from time to time</p> <p>The port is well within its rights to go and appeal to the statutory authority, TAMP, for the genuine hardship caused by the orders.</p>
(v).	<p>The prevailing tariff for all the Jetties only funded by NMPT was USD 0.143 per GRT. Whereas, for a new facility created by MRPL which guarantees additional quantity of crude oil, NMPT is demanding exorbitant Port Dues. TAMP has ignored the fact that same facility is also being used for receiving Crude Oil for Indian Strategic</p>	<p>It is clear from the observations made by KCCI and MSAA that no major ports were charging \$.143 for port dues when SPM operations started in August 2013. A statement showing the port dues charged by major port in the vicinity is attached for ready reference. Hence the port is also</p>

	Petroleum Reserves Limited (ISPRL) for nation's strategic purpose	<p>telling that rate for Port Dues is overdue for revision.</p> <p>The port is not disputing that the SPM facility was created to handle ISPRL storage for country. Accordingly, port, as a public body, gave permission for the same. However the first consignment of ISPRL cargo was received at SPM only in October 2016 and only two parcels have been received till date. Thus, it can be seen that the SPM facilities are being used by MRPL mainly for its regular Crude imports for its Refineries as also for ISPRL.</p>
(vi).	<p>(a). Clause 2.12 of Tariff Guidelines for Fixation of tariff, 2005 states that; when a new facility is commissioned or existing facilities are privatized by any Port Trust, the initial tariff to be allowed will not exceed the existing tariff level at the same port for comparable facilities. If such comparison is not available, prevailing tariff at comparable nearby port will be considered as the reference level.</p>	<p>The port again reiterates that the port dues had not been revised earlier for 5/6 tariff cycles and was overdue for revision. The port has asked for revisions to be applied right from the day SPM operations commenced.</p>
	<p>(b). The SPM facility has 4 service heads viz., Port Dues, Pilotage, tug hire and wharfage. NMPT had prevailing tariff for all services except Pilotage. In fact, the TAMP failed to recognize the fact that available tariff for Port Dues was pertaining to Jetties owned by NMPT and hence, tariff for same service which is owned by MRPL ought to have been much less. By its own admission, TAMP has accepted that there was an error while passing the order and we request the TAMP to adopt downward revision in the case of Port Dues and set right the error committed earlier on.</p>	<p>It is agreed that port had existing charges for Port Dues, Pilotage, Tug Hire and Wharfage, but the same was not relevant for SPM operations. Hence, a new, comprehensive cost based proposal was submitted to TAMP.</p> <p>The port has indeed followed the TAMP Guidelines when it submitted comprehensive cost based proposal for fixation of tariff for all the services provided with regard to SPM operations right from commencement. It is not a revision of existing rates of port.</p>
	<p>(c). Further, it appears TAMP has conveniently ignored the later part of clause 2.12 which states that; If it is established by the private operator that adopting the existing tariff of Port trust will cause hardship to him in view of a higher level of investment made, then a separate cost based tariff will be allowed to him right from the commencement of the commercial operations.</p>	
(vii).	<p>We feel that the review request by NMPT is not maintainable as the request has come up in the wake of refund issue raised by the user. We wished to reiterate that the user have paid exorbitant adhoc tariff fixed by NMPT at the time of commencement of this new service. This rate was fixed without any basis and NMPT did not bother to consider tariff prevailing at neighboring port for similar service.</p>	<p>The statement made by the KCCI and MSAA that the review request came only in the wake of refund issue is not correct as the existing Vessel Related Charges were not relevant for SPM operations and as the SPM operations started, the port users were asked to deposit adhoc charges, pending proposal to be sent to TAMP, as the port is not allowed to render port related services without receiving any advances as per MPT Act.</p>
(viii).	<p>There is no reason for NMPT to cry foul as it has not incurred any additional expenditure while rendering services for this facility. Following statistics will reveal that NMPT has collected huge amount of money from the user in the form of adhoc tariff during the period from commencement of SPM operation to interim order by TAMP.</p>	<p>As regard to point that NMPT has not incurred any additional expenditure for SPM facility, the reply is already given in SI. No.3.0 above.</p> <p>As already indicated in SI. No.7.0 above, adhoc amount was asked to be paid</p>

Name of Port	Pilotage @ SPM during 2013	Pilotage @ berth during 2013	
Paradip	USD 0.2600 per GRT	USD 0.5090 per GRT	pending cost based proposal to be approved by TAMP. As it is a cost based proposal, cost will vary from one port to another and it may not be proper to compare with other ports.
Sikka	USD 0.3000 per GRT	USD 0.3000 per GRT	
Vadinar	USD 0.4125 per GRT	USD 0.6920 per GRT	The location of SPM operation is very relevant while arriving at the cost as more time and some special operational risks are involved in the operations.
Cochin	USD 0.4259 per GRT	USD 0.8033 per GRT	
New Mangalore	USD 1.7600 per GRT	USD 0.3200 per GRT	Port submitted a comprehensive cost based tariff proposal to TAMP subsequently as per 2005 guidelines. The TAMP, after following standard Operating process/procedure, notified the tariff for SPM. The SOR now given for SPM is different from what the port has submitted in its proposal. The port's appeal will result in further collection/ repayment based on the finalization of the proposal by TAMP.
<p>It is known factor that SPM is being installed for economic reasons and hence, world over the dues applicable at SPM is much less than the dues payable at berth and Indian ports are no exception to this concept. A careful perusal of above statistics reveals that Pilotage at SPM at all Indian ports is much less than prevailing tariff for same service at berths. However, NMPT adopted reverse mechanism and collected huge amount from users over a period of one year and that to close to 6 times more than charges applicable at berth. The TAMP in its interim order fixed Pilotage has USD 0.4259 per GRT and the bulk of the refund is payable on account of this component. As a matter of fact, the SPM is situated hardly 10 Nautical Miles from the NMPT.</p>			
(ix).	<p>(a). NMPT has stated in its proposal that port has hired 2 tugs exclusively for this facility and passed on entire hire charges this facility while calculating Pilotage fee. We have stated in our comment sent to TAMP for prior fixing the final tariff that the SPM will be operational only during fair weather and during this period the SPM will not be occupied with vessels on all days. Further, during monsoon period for about 3 to 4 months and during non-occupancy of SPM during fair weather, there will not be any operation at SPM and port may use these tugs for other port operation and factor its impact in cost calculation. However, TAMP rejected our plea based on the clarification furnished by NMPT that SPM operations will be carried out during monsoon also and charges for hire of tugs need to be borne by SPM vessels since NMPT has hired them exclusively for SPM operations</p>		<p>The services for SPM activities are in the nature of vessel related charges, to be borne by the vessels to whom services are rendered.</p> <p>The vessel related services charges are calculated based on the GRT of vessels. In case of SPM, vessel related charges like Pilotage, the rate taken in the proposal sent to TAMP for calculation was the average GRT of SPM vessels for the year. Monsoon/ non-monsoon is not a relevant factor. Berth occupancy of 70% is considered for calculation which is always achieved.</p> <p>For the operation other than SPM, the port owned tugs of 30 tonnes Bollard Pull is sufficient for vessel related operation. It is only for SPM operations that 2 tugs of 50 tonnes Bollard Pull has been hired, as 30 tonnes tugs are not suitable for the said operations. Also the SPM operations are carried at a location 10 nautical miles from the baseline of the port.</p> <p>The hire charges paid of the two tugs are recovered in the port SOR through GRT of SPM vessels.</p>
<p>(b). However, in reality the SPM was never operated during monsoon since commissioning during 2013. And those two tugs hired exclusively</p>			<p>As already stated in para 9.1 above, the monsoon/ non monsoon factor raised by KCCI and MSAA is not relevant.</p>

	for SPM vessels are also being used for other vessel movements at NMPT. It is evident that TAMP blindly accepts the wrong information given by NMPT without any verification.	<p>The allegation made by KCCI and MSAA on TAMP, which is an Independent Statutory Regulatory Authority, is baseless.</p> <p>KCCI and MSAA should refrain themselves from making such baseless allegations.</p>
	(c). Similarly, the port dues at all Indian ports are same for SPM and tanker jetties. We fail to understand the reasons behind this request by NMPT. The clause 2.12 of 2005 Guidelines stipulates inter alia, that when a new facility is commissioned or existing facilities are privatized by any Port Trust, the initial tariff to be allowed should not exceed the existing tariff level at the same port for comparable facilities. NMPT had port dues in its scale of rates. It is very unfortunate that TAMP has conceded to NMPT's request for review	<p>Then existing rate of \$0.143 per GRT for Port Dues was not revised for past 15 years.</p> <p>Considering the latest trend in inflation rates and increase in overall expenditure, charging the rate which is applicable 15 years ago will be highly impractical and illogical.</p> <p>Port is well within its right to bring this fact to the notice of the TAMP and ask for a review/modification.</p>
	(d). Further, it is relevant to mention here that port dues is a fee for entry of a vessel into the 'Port' and this fee cannot vary from berth to SPM.	
(x).	In view of above stated facts, it is prayed to TAMP to direct the NMPT to refund the excess amount of dues collected from the users along with interest as per clause 2.18.1 of the Guidelines for fixation of Tariff, 2005. Alternatively, if TAMP is convinced that NMPT has not made any investment in the said facility and need to collect charges for only services provided, the tariff may be reduced downward so as to bring relief to the public at large, who invested crores of rupees for this project.	In the conclusion the KCCI and MSAA are asking for refund with the interest where the appeal itself is under consideration of Appellant Authority, i.e., TAMP. Refund or otherwise will arise only when the final decision/ order is notified by TAMP. Therefore, the point raised relating to interest does not arise.
