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Tariff Authority for Major Ports

G.No. 159

New Delhi,

17 April 2018

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from the V.O. Chidambaranar Port Trust for recovery of Overhead Charges on Electricity Charges for electricity consumed by M/s.PSA SICAL Terminal Ltd. as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/73/2017-VOCPT

V.O. Chidambaranar Port Trust

Applicant

QUORUM

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

O R D E R

(Passed on this 19th day of March 2018)

This case relates to the proposal dated 05 September 2017 received from V.O. Chidambaranar Port Trust (VOCPT) regarding recovery of overhead charges on Electricity Charges for electricity consumed by M/s.PSA SICAL Terminals Ltd. (PSASICAL)

2.1. The points made by VOCPT in its letter dated 05 September 2017 are summarised below:

- (i). The VOCPT had earlier proposed for the recovery of overhead charges in respect of supply of electricity to Port users, contractors and in respect of PSASICAL to levy overhead charges @ ₹1.15/ unit.

However, the Authority approved the rate of ₹1.15 per unit of electricity vide Order No.TAMP/22/2006-TPT dated 14 July 2008 to recover overhead expenses for supply of electricity from Port users/ contractors excluding PSASICAL. The Authority did not approve Port's proposal to recover the said charges @ ₹1.15 unit from PSASICAL for usage of electricity in VII Berth Container Terminal citing lack of explicit confirmation authorized by the Agreement with the Operator.

- (ii). In this regard, considering Port's Vigilance suggestion to take up the issue of collection of overhead charges once again to TAMP to make the applicability of overhead charges to M/s.PSA SICAL also, a legal opinion has been obtained from Port's Legal cell. A copy of legal opinion obtained on 03 August 2017 is furnished by VOCPT which is brought out here for ease of reference:

"Whether as per Clause 6.1.8 of License Agreement the Port Trust is entitled to collect overhead charges from M/s.PSA SICAL Terminal Ltd. is the question to be decided in this case. Clause 6.1.8 of the license Agreement deals with power and water supply and collection of charges for the powers supplied to the licensed premises of M/s.PSA SICAL Terminals Ltd.

As per the above clause the power charges levied on the licensee shall be as per the scheduled rates of TNEB. The contention of the Finance and Mech Elect Engg Department is that overhead charges are levied from all port users/ Contractors including Private Terminal Operators in the Port as per the agreements entered with them. Since there is no provision in the License Agreement made with M/s.PSA SICAL Terminals Ltd., regarding collection of overhead charges Port is not authorised to collect overhead- charges from them.

In the general revision Order dated 11 December 2011 the existing tariff prescribed at ₹ 1.15 per unit of electricity consumed to recover the overhead expenses for supply of electricity from port to users / contractors was retained in the revised SOR. The TNEB communication which conveyed no objection to Port for collecting overhead charges from the lessee to meet additional expenditure in terms of transformer loss, MD charges etc. stated that in so far as the overhead charges are collected duly complying with the provisions of 31.03 (1) of the Terms and conditions of the TNEB i.e. collection made on 'no profit no loss basis'. As per the Clause 6.1.8. of the License Agreement the Port is entitled to levy charges from the licensee as per the schedule rates of TNEB. As such the schedule rates of TNEB would include

overhead charges also as per the provision of the 31.03(1) of the terms and conditions of the TNEB, if the collection is made on 'no profit nor loss basis'.

Even though there is no provision in clause 6.1.8 of the Licence agreement providing for collection of overhead charges, the words the charges levied on the Licensee shall be as per the schedule rates of TNEB would include collection of overhead charges also. This will not be considered as additional collection of charges as already stated in the earlier legal opinion."

2.2. In view of the above, the VOCPT has requested this Authority to consider the current submission of the port to apply overhead charges to PSASICAL also with respect to existing Scale of Rates vide scale 5.21 of Chapter V.

3. The brief history of the case is given below:

- (i). The VOCPT had approached this Authority in 2003 requesting for fixing a levy to recover overhead charges in respect of electricity charges for all users, including PSASICAL.
- (ii). The VOCPT had then forwarded a copy of legal opinion obtained by it from Legal Adviser Shri. B. Bharath Booshan which is brought out in the Order passed by this Authority vide Order No.TAMP/79/2003-TPT dated 4 May 2004 at Para 6.2. During processing of this case, the PSASICAL had objected the proposed levy.
- (iii). The legal opinion given by VOCPT dated 9 February 2004 as obtained by VOCPT from Legal Adviser Shri. B. Bharath Booshan in concluding para states as follows:

"I, therefore, would suggest that the proposal could be implemented with a proportionate hike, to all the users, except M/s. PSA SICAL Ltd., who is protected by their agreement with you. Speaking about the percentage of hike, I guess, it has to be in the reasonable ratio."

Thus, the legal opinion then forwarded by VOCPT in 2004 categorically stated that overhead charges are applicable to all users except M/s.PSA SICAL who is protected by their agreement with VOCPT.

- (iv). This Authority vide its Order dated 4 May 2004, rejected the proposal of VOCPT for introduction of new levy to cover overhead expenses relevant to electric supply for reasons stated in the said Order.
- (v).
 - (a). Subsequently, the VOCPT in the year 2006 submitted a proposal for fixation of a levy to recover overhead charges in respect of electricity charges. This Authority vide its Order No.TAMP/22/2006-TPT dated 14 July 2008 had, based on the proposal of VOCPT, approved levy of ₹1.15 per unit of electricity consumed by port users / contractors to recover the overhead charges in respect of supply of electricity.
 - (b). As regards PSA SICAL, para 9(viii) of the 14 July 2008 Order which was based on the then legal opinion furnished by VOCPT is reproduced as below:

"The TPT has proposed to bring the supply of electricity to PSA SICAL also within the ambit of the proposed levy. The PSA SICAL has challenged the proposed levy claiming that it has to reimburse charges based on the scheduled rates of TNEB as per the BOT Agreement.

Clause 6.1.8. of the BOT agreement regulates power and water supply arrangement. The relevant clause clearly specifies that that the charges levied on the licensee shall be as per the scheduled rate of the TNEB. The legal opinion obtained by TPT earlier also endorses the position maintained by PSA SICAL.

The TPT has, however, referred TNEB's communication which conveyed no objection to TPT collecting overhead charges, from the lessee to meet additional expenditure in terms of transformer loss, MD charges, etc., insofar as the overhead charges are collected duly complying with the provisions of 31.03 (1) of the Terms and Conditions of the TNEB i.e., collection is made on 'no profit no loss basis'. The clarification given by the TNEB generally permits TPT to levy overhead charges but it does not appear to have been given in the specific case of PSA SICAL after examining the provisions contained in the BOT Agreement.

The TPT has not been able to explicitly confirm that it is authorised under the BOT Agreement to recover the overhead for distribution of electricity from the PSASICAL. The proposal of the TPT to levy overhead charges from PSA SICAL is, therefore, not approved.

Incidentally, even the TPT has subsequently included the related expenditure pertaining to the PSA SCAL for estimating the surplus / deficit position in the revised cost statement prepared for general revision of its Scale of Rates pending a final decision by this Authority on its proposal to levy overhead charges on electricity in respect of PSA SICAL."

- (vi). Subsequently, this Authority, while approving the general revision of SOR of VOCPT vide Order No.TAMP/9/2010-TPT dated 11 October 2011, has allowed the recovery of then existing levy i.e. at the rate of ₹1.15 per unit approved in the 14 July 2008 Order for supply of electricity from port users / contractor except PSASICAL as brought out in para 17(xLv) of the 11 October 2011 Order.
- (vii). While approving the subsequent general revision of SOR of VOCPT under Tariff Policy 2015, vide Order No.TAMP/29/2016-VOCPT dated 17 September 2016, this Authority has approved the recovery of overhead expenses for supply of electricity by port at ₹1.47 per unit for supply of electricity from port users / contractor except PSASICAL as proposed by VOCPT.

4.1. It is also relevant to state that the VOCPT vide its letter no.FIN/OFFCJ-SOR-GEN-IV-15-4090 dated 18/19 December 2015 requested to examine the issue based on the observation of Audit on levy of overhead charges at ₹1.15 per unit on electricity consumed by M/s.PSA SICAL Terminal Ltd. and requested to amend Authority's Order No.TAMP/9/2010-TPT dated 11 October 2011 for settlement of Audit remark.

4.2. In this regard, it was communicated to VOCPT vide our letter dated 7 January 2016 that the decision of this Authority in July 2008 Order of not approving the levy for PSA SICAL has not been reversed in the tariff Order of October 2011. Hence, the action of the VOCPT of not levying the overhead charges from the PSA SICAL is found to be in line with the Order passed by this Authority in October 2011. The VOCPT has not pointed out any apparent error on face of records considered in the said order. Hence, the question of amendment to the October 2011 Order sought by the VOCPT does not arise.

5. The VOCPT has now, citing the legal opinion of the legal cell of the VOCPT as brought out in para 2.1. above, requested this Authority to consider the current port's submission on the issue and has sought approval for collection of overhead charges from the PSASICAL also with respect to existing Scale of Rates vide scale 5.21 of Chapter V.

6. In accordance with the consultative procedure prescribed, a copy of the VOCPT proposal was circulated to M/s.PSA SICAL Terminal Ltd. and Tamil Nadu Electricity Board vide our letter dated 13 October 2017 seeking their comments. The comments received from PSASICAL was forwarded to VOCPT as feedback information. The VOCPT has not furnished any comments thereon.

7. A joint hearing in this case was held on 7 December 2017 at the VOCPT premises. The VOCPT made a brief power point presentation of its proposal. At the joint hearing, the VOCPT, PSASICAL and TNEB have made their submissions.

8. As agreed at the joint hearing, the VOCPT was requested vide our letter dated 28 December 2017 with subsequent reminder dated 10 January 2018 to take action on the following points:

- (i). Vide our letter dated 13 October 2017 it was brought to the attention of VOCPT that, this Authority had passed an Order No.TAMP/79/2003-TPT dated 4 May 2004 based on the then legal opinion of Legal Adviser Shri. B. Bharath Booshan forwarded by VOCPT in 2004 vide VOCPT letter dated 25 March 2004. The legal opinion then forwarded by VOCPT which is also reproduced in para 6.2 of the Order dated 4 May 2004 stated that the proposal of VOCPT for levy of overhead charge could be implemented to all users except PSA SICAL Ltd. who is protected by their agreement with the port. Now, the VOCPT has approached this Authority based on the legal opinion given by port's legal cell. The legal opinion furnished in 2004 and legal opinion now furnished by the port from its legal cell are contradicting. Hence, the VOCPT was requested to closely examine the matter and furnish their comment immediately. The VOCPT has stated at the joint hearing that it will obtain a legal opinion of AG in the matter. The port was requested to furnish a copy of the same to this Authority.
- (ii). The prescription of existing revised rate for recovery of overhead expenses for supply of electricity at ₹1.47/ tonne was approved by this Authority under the general revision of SOR of the port following the Tariff Policy Guidelines of 2015 issued by the Ministry of Shipping (MOS) under ARR Model. In the said Order, the rates as proposed by VOCPT for various cargo, vessel and miscellaneous services including charges for recovery of overhead expenses for supply of electricity by port were approved by this Authority.

At the joint hearing, a point arose whether the entire overhead charges for distribution of electricity including Transmission loss is being recovered by the port. As agreed at the joint hearing, the VOCPT was requested to do a cost analysis to examine whether the entire overhead charges incurred by port for distribution of electricity is recovered by the VOCPT at the existing rate of ₹1.47 per unit proposed by VOCPT in the said general revision of SOR and approved by this Authority and furnish the same to this Authority.

9.1. With reference to point of action decided at the joint hearing brought out in para 8 (i) above, the VOCPT vide its letter dated 1 February 2018 has furnished a copy of the Legal opinion dated 17 January 2018 given by the Additional Solicitor General (ASG) to VOCPT. The opinion of the ASG is reproduced below:

"4. Article 5 of the Agreement deals with construction and clause 5.6 read as follows:-

"5.6 Construction Power and Water

The Licensor shall supply power for construction purposes, as made available to the Licensor by the Tamil Nadu Electricity Board, subject to terms and conditions including payment by the Licensee, at rates prescribed by the Licensor from time to time as per provisions of Article 6.1.8."

5. Clause 6.1 under Article 6 deals with Obligations of the Licensee and clause 6.2 deals with the obligations of the Licensor. Para 6.2.1(viii) reads as follows:-

"6.2.1 (viii) supply power to the extent of about 1800 KVA as made available to the Licensor by TNEB subject to payment of charges by the Licensee at rates to be prescribed by the Licensor from time to time as per Article 6.1.8. Take off point for electricity shall be from the sub station at additional berth (near 6th berth)".

6. Article 6.1.8 has to be understood, for which purpose, it is extracted here-in-under:-

"6.1.8 Power and Water Supply

The Licensee shall be liable for, and shall pay to the Licensor, throughout the term of the License Period or early Termination, as the case may be, all charges for the

power supplied to the Licensed Premises and/ or the Container Terminal. The Licensee shall, at its cost, but to the satisfaction of the Licensor, install metre to measure the consumption of power. In the event of disruption of power supply or break down in supply of power for any reasons whatsoever or for a planned maintenance shut down, no compensation whatsoever shall be paid by Licensor for any loss or damages caused to or suffered by the Licensee as a result thereof. The Licensee shall, at its cost, be entitled to make alternate arrangement for power subject to prior written approval of the Licensor and subject to Licensee obtaining necessary permissions from the concerned authorities. The charges levied on the Licensee shall be as per the scheduled rates of TNEB.

It is agreed by the Licensor that in case of prolonged power-supply disruption at a stretch not less than 4 hours for each incident, total not less than 500 hours in a Year, due consideration shall be given by the Licensor for loss in productivity under provisions of Article 7.3 and 7.3.4. However no reduction on this account shall be allowed in payment of royalties as per provision of Article 7.3.5.2.

The Licensee also agrees and undertakes to pay any increase in respect of power tariffs, as a result of revision by the Tamil Nadu Government / Tamil Nadu Electricity Board from time to time.

However the TNEB Rules and Regulations for the HT and LT consumers for Tariff, taxes etc., along with penal clauses, if any shall be applicable to the Licensee also.

The Licensor has represented to the Licensee that there is an adequate water supply to cater to the requirement of the Licensee and offered to supply water to the Licensee. The Licensee has agreed to take the water supply at rates fixed by the Licensor (subject to revision from time to time and as applicable to all port users) for the Licensed Premises and / or the Container Terminal from the Licensor. The Licensee shall be liable for, and shall pay to the Licensor, throughout the term of the License Period or early Termination as the case may be, all charges for the water made available to the Licensed Premises and / or the Container Terminal at the prevailing rate. The Licensee shall, at its cost but to the satisfaction of the Licensor, install meters to measure the consumption of water.

The Licensor receives power in bulk from Tamil Nadu Electricity Board (TNEB). In future if there are any restriction or short supply of power from TNEB, then the power supplied to the Licensee shall also be subject to these restrictions / short supply proportionately as for Container Terminal of the Licensee. The Licensee shall also be subject to restrictions / short supply of water in the event that the Licensor faces any restrictions or short supply in its receipt of water from Korangani to Tuticorin Port proportionately as for Container Terminal of the Licensor.”

In connection with the above requirements referred to under 6.2, the port has provided for supply of power as referred to under 6.2.1(viii).

7. *It is also not in dispute that electricity consumption charges are being paid by the Licensee as per the scheduled rates of TNEB.*

8. *As per the agreement, while erection of necessary infrastructure for electricity has to necessarily borne by the Port in view of its obligation to power supply, the question is whether for maintenance of infrastructure the Port is bound to meet the maintenance expenditure or it could be recovered from the Licensee.*

9. *The question is whether such charges for over-heads could be recovered under 6.1.8? The last line of the first paragraph of the 6.1.8 refers to charges levied on the Licensee shall be as per the scheduled rates of TNEB. Admittedly, TNEB has not fixed any scheduled rates with regard to over-head charges and therefore unless a specific rate is fixed by TNEB towards overhead charges, provisions under 6.1.8 cannot be invoked for recovering the over-head expenditure.*

10. However, in my opinion, the said charges can possibly be traced to 6.2.3. Paragraph 2 onwards of 6.2.3 provides as follows:

“The Licensee shall be solely responsible for keeping at all times, the Licensed Premises and / or Container Terminal in good order and condition from the Date of Award of License, till its expiry or Termination, as the case may be.

The Licensee shall, at all times during the License Period, at its own risks, costs, charges and expenses, perform and pay for maintenance repairs, renewals and replacements in the Licensed Premises and / or the Container Terminal or any parts thereof, whether due to use and operations or due to deterioration of materials, so that on the expiry or Termination of this License, the same shall, except, normal wear and tear, be in as good condition as at the commencement of the License.

The Licensee agrees and undertakes to replace the major container handling equipments by new container handling equipments having specifications not inferior to those of the equipments being replaced as per the following provisions:

- 1). *Replacement of rail mounted quay cranes between 17th to 20th year from the date of existence of the assets.*
- 2). *Replacement of rubber tyred gantry cranes between 17th to 20th year from the date of existence of the assets.*

For the purpose of replacement of equipment under this agreement, the date of existence of the replacement assets shall be as per article 5.12.

The Licensee agrees to plan for replacement of the equipments well ahead of the due date of replacement of the equipments.

Subject to what is provided in this Agreement, the Licensee is not required to pay for or provide for upkeep, maintenance or replacement of facilities and structures beyond the License Period.

[The reference given in para 10 of the legal opinion is to clause no.6.2.3 of the LA. However, in LA, the Clause no. is 6.3 which contains the above stipulation and not 6.2.3.referred in the Legal opinion.]

While it is the responsibility of the Port to make available the electricity, any charges incurred while maintaining those lines have to be necessarily borne by the Licensee as the agreement does not provide for payment of such expenses by the Port.

11. *If the cables are located outside the licensed area, as the power line is used for supply of electricity to various berths, the expenses incurred by the Port for maintaining the said infrastructure has to be necessarily divided between the beneficiaries.*

12. *It appears that the Port Trust has written to TNEB seeking permission to charge for the over-heads and TNEB has permitted the Port Trust to calculate on no-profit-no-loss basis to meet the additional expenditure in terms of transformer loss, MD charges etc.*

13. *In the circumstances, I am of the opinion that since maintenance of the facility is very much essential to achieve the objectives of the License Agreement, the Licensee is bound to reimburse to the Port the maintenance charges (proportionately) and it well within the right of the Port to collect the same.”*

9.2. The VOCPT, while forwarding a copy of the Legal Opinion of ASG, has stated the following:

- (i). The ASG opined that the first paragraph of the 6.1.8 of the licence agreement refers to charges levied on the Licensee and shall be as per the scheduled rates of Tamilnadu Electricity Board (TNEB). Admittedly, TNEB has not fixed any scheduled rates with regard to overhead charges. Therefore unless a specific rate is fixed by

TNEB towards overhead charges, provisions under 6.1.8 cannot be invoked for recovering the overhead expenditure. In view of the above the Authority may take appropriate decision to resolve the pending issue.

- (ii). The other clause 6.2.3. is not relevant to the purpose and may not come for such recovery.

10. With reference to the second point of action of the joint hearing brought out in para 8 (ii) above, the VOCPT, vide its e-mail dated 14 February 2018, has stated that as regards to cost analysis, as per the revision of SOR approved by the Authority vide Order dated 17 September 2016, the approval of proposed tariff was considered by the Authority as per the Tariff Policy Guidelines, 2015 based on the Annual Revenue Requirements for various services including charges for recovery of overhead expenses for supply of electricity by Port. Moreover, segregation and apportionment of the relevant cost involved exclusively for the facility of distribution of electricity for the various users including PSASICAL, is quite cumbersome because various activities are outsourced and hence could be apportioned on percentage basis only. Hence, the VOCPT has requested that the submission of such cost analysis may not be insisted and has requested to take an appropriate decision based on the legal opinion obtained from Shri G. Raja Gopalan, ASGI on the subject issue.

11. 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>.

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

- (i). The proposal of the VOCPT dated 5 September 2017 seeks approval of this Authority for recovery of overhead expenses for supply of electricity by the port to PSA SCIAL Terminals Ltd. (PSA SICAL) based on legal opinion obtained by the port from its legal cell flowing from a suggestion made by the Chief Vigilance Officer (CVO) to the port to recover the Electricity Overhead Charges from PSA SICAL Terminals Ltd. (PSA SICAL) also similar to other users.
- (ii). This Authority had dealt with this issue while disposing of the proposals earlier filed by the VOCPT for fixation of levy for recovery of overhead expenses for supply of electricity by the port from port users, contractors and PSASICAL based on the legal opinion given by VOCPT dated 9 February 2004 in the Order No.TAMP/79/2003-TPT dated 4 May 2004 and Order No.TAMP/22/2006-TPT dated 14 July 2008. The PSA SICAL and VOCPT are governed by a specific BOT License Agreement (LA) dated 15 July 1998 entered into between the VOCPT and the PSA SICAL.
- (iii). As has already brought out in the earlier paragraphs, the relevant portion of legal opinion dated 9 February 2004 given by VOCPT as obtained by the port from Legal Adviser Shri. B. Bharath Booshan brought out in para 6.2. of Order No.TAMP/79/2003-TPT dated 4 May 2004 with reference to the proposal of the port for fixation of levy to recover overhead charges in respect of electricity supplied by the port is as follows:

"As far as the agreement entered in to with other port users, which are predominantly uniform, I find that clause (ii) would come into your rescue. This clause specifies that the licensee shall, during the period of lease pay all rates, taxes and charges of every description now payable or hereafter becomes payable by the lesser or lessee in respect of the demised plot of plot or the buildings to be erected thereupon. This provision would mean that any rates, taxes or charges revised, being revised or to be revised shall also be paid by the lessee."

"In this particular column in the agreement, it is specifically mentioned that the 'charges' levied on the licenses shall be as per the schedule rates of TNEB. Therefore in my opinion M/S PSA SICAL Ltd. can definitely vindicate their rights in

case of any attempt for additional collection and not to pay anything extra other than what is granted in the agreement in the clause 6.1.8.”

“I would suggest that the proposal could be implemented with a proportionate hike, to all the users, except M/S PSA SICAL Ltd, who is protected by their agreement with you. Speaking about the percentage of hike, I guess, it has to be in the reasonable ratio

- (iv). In the subsequent Order No.TAMP/22/2006-TPT dated 14 July 2008 with reference to the proposal of the port for fixation of levy of ₹1.15 per unit of electricity consumed to recover overhead expenses for supply of electricity from port users/contractors and PSA SICAL, this Authority had approved the levy proposed by the VOCPT for recovery of overhead expenses for supply of electricity from port users/contractors except PSA SICAL based on the legal opinion furnished by VOCPT during the proceedings relating to May 2004 Order.
- (v). The VOCPT has filed the proposal dated 5 September 2017 with the opinion given by its legal cell. The gist of the opinion given by the legal cell of the port drawing reference to Article 6.1.8 of the LA is that the Schedule of Rates of TNEB would include overhead charge also; and, collection of overhead charges will not be considered as additional collection. However, the VOCPT decided during the proceedings of this case to take legal opinion from external source, (i.e.) from the Government Law Officer (ASG). The opinion given by the ASG does not support the opinion given by the legal cell of the VOCPT. As opined by the ASG, the charges levied on the licensee shall be as per the Schedule of Rates of TNEB as referred in Article 6.1.8 of the LA. But, TNEB has not fixed any Scheduled Rates with regard to overhead charges. Therefore, the ASG has opined that unless a specific rate is fixed by TNEB towards overhead charges, provision under Article 6.1.8 cannot be involved to recover the overhead charges. Thus, the opinion of the ASG has overruled the opinion given by the legal cell of the VOCPT. The VOCPT has also considered the opinion given by the ASG and has requested this Authority to take an appropriate decision to resolve the matter. The VOCPT has not reiterated the opinion earlier given by its legal cell. That being so, the opinion given by the ASG is taken into consideration by this Authority as suggested by the VOCPT.
- (vi). Article 6.3 of the LA governs the responsibility of the PSASICAL for maintenance and replacement of facilities. Referring to this Article, the ASG is of the opinion that the PSASICAL is bound to reimburse to the port the maintenance charges and it is well within the right of VOCPT to collect the same since maintenance of the facility is very much essential to achieve the objectives of LA. However, the VOCPT is of the view that Article 6.3 is not relevant for the purpose. Since the VOCPT does not agree with this opinion, this opinion of the ASG does not fall in the zone of consideration by this Authority.

13. In the result, and for the reasons given above, and based on a collective application of mind, the proposal of the VOCPT to apply the existing schedule 5.21 of Chapter V governing levy for recovery of overhead charges on Electricity Charges approved by this Authority vide Order No.TAMP/29/2016-VOCPT dated 17 September 2016 on PSA SICAL Terminals Ltd is not approved.

(T.S. Balasubramanian)
Member (Finance)

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

F.No. TAMP/73/2017-VOCPT - Proposal from the V. O. Chidambaranar Port Trust (VOCPT) for recovery of Overhead Charges on Electricity Charges consumed by M/s. PSA SICAL Terminal Ltd.

A summary of comments received from M/s.PSA SICAL Terminal Ltd. is summarized below:

Sl. No.	Comments of users/ user organisations / lessees
1.	M/s. PSA SICAL Terminal Limited
(i).	As per license agreement, clause 6.1.8 deals with the power and supply and collection of charges for the powers supplied to the licensed premises. As per the clause "The charges levied on the licensee shall be scheduled rate of Tamil Nadu Electricity Board (TNEB)". The licensor can claim from the licensee the schedule rate of TNEB for the consumption of power only which is the norm even today and we have been paying same.
(ii).	As per the agreement we are not liable to pay to the VOCPT proposal for the recovery of overhead charges in respect of supply of electricity to port user to levy overhead charges @ ₹1.15/- per unit. We are governed by the license agreement and any interpretation by VOCPT on the LA clause to suit their convenience is not acceptable to us.
(iii).	Port proposal may be rejected.

2. A joint hearing in this case was held on 7 December 2017 at the VOCPT premises. The VOCPT made a brief power point presentation of its proposal. At the joint hearing, the VOCPT, the PSA SICAL and TNEB have made the following submissions:

V.O. Chidambaranar Port Trust (VOCPT)

- (i). Proposal is for recovery of overhead charges of electricity from PSA SICAL.
- (ii). Even earlier VOCPT had filed a proposal in this regard.
- (iii). M/s.PSA SICAL challenged the proposed levy citing clause 6.1.8 of the BOT agreement which specifies that the electricity charges shall be levied on the Licensee as per scheduled rate of the Tamil Nadu Electricity Board (TNEB).
- (iv). Port had then referred TNEB letter dated 9 July 2004. The TNEB has therein stated that it has no objection in the port collecting the overhead charges from the lessees (i.e. users of the electricity) to meet the additional expenditure in terms of transformer loss, Maximum Demand charges, etc., in so far as the overhead charges are collected duly complying with provisions of 31.03(I) of the Terms and Conditions of Board provided the collection is made on "no profit no loss basis".
- (v). The TNEB has in its letter dated 9 July 2004 also clarified that the Port is a consumer of the TNEB and not a licensee, and hence approval of the Tamil Nadu Electricity Regulatory Commission (TNERC) is not required for collecting the overhead charges.
- (vi). The PSA SICAL has stated that clause 6.1.8 of the BOT agreement regulates power and water supply arrangement. The PSA SICAL thus had challenged the proposed levy claiming that it has to reimburse charges based on the schedule of rates of TNEB as per the BOT Agreement.
- (vii). The Authority vide Order dated 14 July 2008 approved the proposal to recover the Electricity Overhead Charges from all Port Users and Contractors except M/s.PSA SICAL.
- (viii). The Electricity Overhead Charges were collected from all Port Users/ Contractors at ₹1.15 per unit except M/s.PSA SICAL as per Order dated 14 July 2008.

- (ix). The Chief Vigilance Officer (CVO) vide letter dated 20 March 2017 reiterated to recover the Electricity Overhead Charges from M/s.PSA SICAL also similar to other users and to take up the issue with TAMP once again to make overhead charges applicable to PSA SICAL on par with other users and BOT operators.
- (x). The Port Legal Cell also opined that even though there is no provision as per clause 6.1.8 of the License Agreement providing for collection of overhead charges, the words “the charges levied on the Licensee shall be as per scheduled rates of TNEB” would also include the collection of overhead charges and this will not be considered as additional collection of charges.
- (xi). Hence, approval of TAMP is sought for collection of overhead charges from M/s.PSA SICAL also with respect to existing Scale of Rates vide Scale 5.2.1 of Chapter V.
- (xii). Present overhead charges is @ ₹1.47 per unit. M/s.PSA SICAL consumes 2.00 lakh units per month on an average.

M/s.PSA SICAL Terminal Ltd.

- (i). The matter was closed in the year 2008. It's reopened now by the port because the CVO has raised this matter as stated by the VOCPT.
- (ii). We are governed by the Concession Agreement entered with VOCPT. As per the Concession Agreement, we have to pay schedule of rates as per TNEB for power consumption.
- (iii). We do not agree with the proposal of the port.

Tamil Nadu Electricity Board

- (i). Port has to collect electricity charges as per TNEB rates. As regards overhead charges, it's the choice of the port.

[Member (Finance), TAMP: What is the total overhead charges for distribution of electricity including Transmission loss? Whether the VOCPT is recovering entire overhead charges from the tariff approved for VOCPT. VOCPT may furnish a calculation for showing whether all overhead charges including transmission loss on the distribution of electricity to the consumers including PSA SICAL are recovered or not.]

V.O. Chidambaranar Port Trust (VOCPT)

- (i). We will furnish calculation: We will also obtain AG opinion and send to TAMP.

M/s.PSA SICAL Terminal Ltd.

- (i). CVO of VOCPT treats contractors and PSA SICAL at par. Contractors and other users have the scope to pass on the overhead charges collected by VOCPT to their users. We are, however, governed by tariff fixed by TAMP. So we cannot pass it on.
[Member (Finance), TAMP: Expenditure including charges towards electricity cost incurred by BOT operators (including PSA SICAL) are allowed as expense in fixation of their tariff. In the case of PSA SICAL, however, the last tariff order is subjudice.]
- (ii). TAMP has rightfully taken the decision in 2004 and 2008 as regards PSA SICAL. The same should be maintained.
- (iii). We have already given our comments. We maintain the same stand.