

(Published in Part - III Section 4 of the Gazette of India, Extraordinary)

## **TARIFF AUTHORITY FOR MAJOR PORTS**

G. No. 30

New Delhi,

27 January 2015

### **NOTIFICATION**

In compliance of the policy direction issued by Government of India in the Ministry of Shipping (MOS) under Section 111 of the Major Port Trusts Act, 1963 (38 of 1963), as conveyed by MOS vide its communication No.8(1)/2014-TAMP dated 13 January 2015, the Tariff Authority for Major Ports hereby notifies the following Tariff Policy for Major Port Trusts called "**Policy for Determination of Tariff for Major Port Trusts, 2015**".

The relevant clause of the Tariff Policy for Major Port Trusts called "**Policy for Determination of Tariff for Major Port Trusts, 2015**" will come into effect from the date of issue. The MOS has issued these directions to this Authority vide its letter dated 13 January 2015. Accordingly, these Tariff Policy for Major Port Trusts called "**Policy for Determination of Tariff for Major Port Trusts, 2015**" will come into effect from 13 January 2015.

#### **Policy for Determination of Tariff for Major Port Trusts, 2015**

##### **Preamble**

The market conditions for provision of port services have undergone significant change since liberalization in the Port sector and expansion of port infrastructure following the introduction of Public Private Partnerships at Major Ports since 1996. Non-major ports have expanded rapidly and now have a substantial presence which accounts for about 42% of the cargo share. Further, there is no parity in the regulation mechanism between the major port trusts and the non-major ports. Whilst tariffs of Major Port Trusts are regulated following cost plus return approach, non-major ports are not covered by any tariff regulation. A need is, therefore, felt to give flexibility to the Major Port Trusts to react to the market forces and also to encourage Major Port Trusts for better performance within the ambit of Major Port Trusts Act, 1963. In order to accomplish this Government hereby issues the following Tariff Policy:

#### **POLICY FOR DETERMINATION OF TARIFF FOR MAJOR PORT TRUSTS, 2015**

##### **1. PRELIMINARY**

- 1.1 This Policy is issued to the Major Port Trusts and the Tariff Authority for Major Ports (the "TAMP") as a policy direction under Section 111 of the Major Port Trusts Act, 1963 as amended from time to time (the "MPT Act"), for fixation of tariffs at Major Port Trusts to which the provisions of the MPT Act apply or are extended (the "Port(s)").
- 1.2 The direction may be called '*Policy for Determination of Tariff for Major Port Trusts, 2015 (the "Tariff Policy")*'.
- 1.3 This Policy shall come into effect from the date of issue, and unless reviewed earlier or extended by the Government, shall remain in force for a period of 3 years.
- 1.4 This Policy is not applicable to BOT / BOOT operators or any other arrangement for private sector participation.
- 1.5 This is a broad policy framework. The TAMP may, in consultation with all the Major Port Trusts, issue working guidelines to operationalise the policy frame work.

## 2. DETERMINATION OF SCALE OF RATES

- 2.1 Each Major Port Trust will assess the Annual Revenue Requirement (ARR) which is the average of the sum of Actual Expenditure as per the final Audited Accounts of the three years 2011-12 (Y1), 2012-13 (Y2) and 2013-14 (Y3) plus Return at 16% on Capital Employed including capital work-in-progress obtaining as on 31<sup>st</sup> March 2014, duly certified by a practising Chartered Accountant/ Cost Accountant.
- 2.2 Actual Expenditure will be the total expenditure as reflected in the Audited Annual Accounts of the Major Port Trusts, subject to following adjustments and any other adjustments to be decided by TAMP in consultation with all the Major Port Trusts:
- (i). All expenses relating to Estate related activity are to be excluded.
  - (ii). Interest on loans is to be excluded.
  - (iii). Only 1/5<sup>th</sup> of one time expenses like arrears of wages, arrears of pension/ gratuity, arrears of ex-gratia payments arising out of wage revision etc. are to be included. Similarly 1/5<sup>th</sup> of the contribution to Pension Fund would also be considered for the calculation of ARR.
  - (iv). Management and General Administration Overheads subject to a cap of 25% of aggregate of the operating expenditure and depreciation is only to be considered.
- 2.3 The ARR so assessed as on 31<sup>st</sup> March 2014 will be indexed by 100% of the Wholesale Price Index (WPI) applicable for the year 2014-15 as communicated by TAMP to the Major Port Trusts.
- 2.4 The indexed ARR determined by the Major Port Trusts as on 31<sup>st</sup> March 2015 as per clause 2.3 is the ceiling Annual Revenue Requirement based on which the Major Port Trusts will draw the Scale of Rates (SOR).
- 2.5 For drawing the SOR, the traffic to be considered would be the overall traffic estimated exclusively for the port for the year 2014-15.
- 2.6 Based on the Annual Revenue Requirement as assessed as per Clause 2.4 above and taking into account the traffic as per Clause 2.5, the Major Port Trusts will have the flexibility to determine the rates to respond to the market forces based on its commercial judgement and draw the SOR within the ceiling of indexed Annual Revenue Requirement, duly certified by a practising Chartered Accountant/ Cost Accountant.
- 2.7 While going for a change in SOR the Major Port Trusts have to ensure that as a result of the changes in SOR there will not be a loss of traffic. The responsibility of ensuring this would rest with the Chairman of the Major Port Trusts.
- 2.8 The SOR will be indexed annually to inflation to the extent of 100% of the variation in Wholesale Price Index (WPI) announced by the Government of India occurring between 1<sup>st</sup> January 2014 and 1<sup>st</sup> January of the relevant year. Such automatic adjustment of SOR will be made every year and the adjusted SOR will come into force from 1<sup>st</sup> April of the relevant year to 31<sup>st</sup> March of the following year.
- 2.9 The indexed SOR will be effective from 1<sup>st</sup> April 2015 and shall remain valid for 3 years subject to annual indexation as mentioned in clause 2.8. The annual indexation will be subject to Clause 3.2 of this Tariff Policy.
- 2.10 Tariff arrangement for captive berths/ facilities where a separate tariff arrangement is prescribed in the mutual agreement entered into by the port and the concerned user, will continue to be governed by the respective agreement. Tariff for captive berths/ facilities not covered by specific Agreements will continue to be stipulated by TAMP.

### **3. PERFORMANCE STANDARDS OF MAJOR PORT TRUSTS**

- 3.1 The Major Port Trusts shall also commit Performance Standards for cargo related services in terms of average ship berth day output, average moves per hour in case of container handling. For vessel side services, the port shall prescribe Performance Standards in terms of average turnaround time of vessels and average pre-berthing time of vessels and any other parameter which is found relevant by the Port.
- 3.2 The indexation of SOR as provided in Clause 2.8 will be subject to achievement of Performance Standards committed by Major Port Trusts. If a particular port does not fulfil the Performance Standard, no indexation would be allowed during the next year.

### **4. UNADJUSTED PAST PERIOD SURPLUS, PAST PERFORMANCE ANALYSIS**

- 4.1 The additional surplus assessed by TAMP in earlier tariff Orders which remain unadjusted will be transferred by Major Port Trusts to any fund as desired by the Port Trust. Further, the additional surplus, if any, accruing to the Major Port Trusts during the period of application of existing Scale of Rates till the effective date of implementation of the new Scale of Rates fixed under this policy should be assessed and transferred to the General Reserve and use the funds for the purpose of development, creation and/ or modernization of the port infrastructure facilities.
- 4.2 The balance in the Escrow Account maintained by the Major Port Trusts to account for the Royalty/ Revenue share receipts and the future accruals in the Escrow Account can be utilised by the Major Port Trusts for the purposes as decided by the Board of Trustees of the concerned Major Port Trusts.

### **5. PROCEDURE FOR FILING AND PROCESSING THE PROPOSAL**

- 5.1 The SOR, along-with conditionalities governing them, for services rendered or facilities provided as well as the charges for use of properties and assets and Performance Standards shall be formulated by the individual Major Port Trust, in accordance with this Policy as amended from time to time.
- 5.2 The Major Port Trusts shall host the draft SOR along with the proposed Performance Standards in its website and giving the designated email address of Port as well as TAMP for comments of relevant stakeholder / users within 15 day's time.
- 5.3 The Major Port Trusts shall submit its replies on the comments received from Port Users to TAMP not later than 15 days from the last date of receipt of comments from the port users.
- 5.4 In case there are no objections from users for a proposal or a case, TAMP need not organize any joint hearing.

### **6. GRIEVANCE REDRESSAL**

- 6.1 In the event any user has any grievance regarding non-achievement by the Major Port Trust of the Performance Standards as notified by the TAMP, he may prefer a representation to TAMP which, thereafter, shall conduct an inquiry into the representation and shall forward its findings to the concerned Port Trust with a direction to comply with the Performance Standards as notified by the TAMP.

### **7. MANDATORY DISCLOSURES BY MAJOR PORT TRUSTS**

- 7.1 All the Major Port Trusts shall furnish to TAMP annual reports on cargo traffic, ship berth day output, average turnaround time of ships, average pre-berthing waiting time as well as the tariff realized for each of its berth. In addition, for the container berths, annual reports shall also be provided on average moves per crane hour and average dwell time for containers. The annual reports shall be submitted by the

Ports within 60 days following the end of each of the year. Any other information which may be required by TAMP shall also be furnished to them from time to time.

**8. OTHER ASPECTS**

- 8.1 The rates prescribed in the Scale of Rates are ceiling levels; likewise, rebates and discounts are floor levels. The ports may, if they so desire, charge lower rates and/ or allow higher rebates and discounts.
- 8.2 Subsequent to the Notification of SOR, the ports may also, if they so desire, rationalise the conditionalities prescribed in the SOR.
- 8.3 The ports should notify the public such lower rates and/ or rationalisation of the conditionalities governing the application of such rates and continue to notify the public any further changes in such lower rates and/ or in the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rates notified by the TAMP.
- 8.4 Major Ports shall charge only for services provided for them. No notional booking of labour and other similar notional charges would be permitted.
- 8.5 Concessional tariff will be prescribed for coastal cargoes/containers/ vessels, as per the policy directions of the Government.

**9. REGULATION OF CHARGES LEVIED BY OTHER AUTHORISED SERVICE PROVIDERS**

- 9.1 In cases where authorisation arrangement u/s 42(3) is other than by way of a BOT concession agreement, ceiling rates will be prescribed for such services. For this purpose, proposals for these charges should be initiated by the concerned Major Port Trust after identifying such authorised services coming under the ambit of tariff regulation and forward to TAMP. The proposal shall contain the Performance Standards to be achieved by the service provider and tariff linked to Performance Standard should be proposed.
- 9.2 In case there is no ceiling tariff prescribed in the concerned Major Port for a particular service / facility under such arrangement, the port shall adopt the tariff prescribed for the similar service/ facility prescribed in any other Major Port Trust. If there is no tariff prescribed in any Major Port Trust or the rate prescribed is not representative for the cargo/ service/ facility envisaged, the Port Trust may file a proposal with reference to optimal capacity following the principles of 2008 guidelines or based on rated capacity. [with reference to the technical specification of the service/ facility/ equipment] The proposal of Port Trust shall contain the Performance Standards to be achieved by the service provider and tariff linked to Performance Standards should be proposed.
- 9.3 The tariff approved by TAMP with reference to clauses 9.1 and 9.2 shall be subjected to automatic indexation as prescribed in clause 2.8 of these guidelines from the second year onwards.

**(T.S. Balasubramanian)**  
Member (Finance)