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New Delhi, the 28 November, 2001

**Tariff Authority for Major Ports**

**NOTIFICATION**

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal of the Chennai Port Trust for incorporation of policy guidelines for land / waterfront management of major ports issued by the (then) Ministry of Surface Transport in its Scale of Rates as in the Order appended hereto.

( S. Sathyam )

Chairman

**Tariff Authority for Major Ports**

**Case No.TAMP/91/2001-CHPT**

**The Chennai Port Trust (CHPT)**

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**Applicant**

**ORDER**

**(Passed on this 5th day of November 2001)**

The Chennai Port Trust (CHPT) has submitted a proposal for incorporation in its Scale of Rates of the policy guidelines for land / waterfront management of Major Ports issued from time to time by the (then) Ministry of Surface Transport.

2. In its proposal, the CHPT has made the following points:-

- (i). The (then) Ministry of Surface Transport had first issued guidelines relating to land and waterfront management of the Major Port Trust on 1 April 1995. These guidelines were amended by the Ministry from time to time.
- (ii). The guidelines issued on 1 April 1995 were amended by the Ministry as given below:
  - (a). MOST's letter No.PT-12011/55-87-PT dated 25.1.96
  - (b). MOST's letter No.PT-12011/55-87-PT dated 11.3.98
  - (c). MOST's letter No.PT-12011/55-87-PT dated 15.2.2000

- (iii). In order to avoid audit paras as well as loss of revenue to the port, the CHPT has implemented these guidelines particularly in respect of escalation / collection of premium, security deposit / guarantee, etc., as advised by the Ministry of Shipping.
- (iv). The guidelines given by the Ministry are in the form of a set of instructions to the ports and also provisions that should be necessarily incorporated in the (lease / licence) agreement.
- (v). The conditionalities included in the guidelines issued by the Ministry have been incorporated in all general long-term lease agreements and which are being widely accepted and adopted in the lease agreements entered into by the CHPT with the various port users. (The port has now proposed to include these conditionalities in the Scale of Rates).
- (vi). Conditionalities prescribed by the Ministry for long-term lease allotted on premium-upfront basis were not adopted as no land has been allotted on premium-upfront basis. (The port has now proposed to include these conditionalities in the Scale of Rates).
- (vii). The following two clauses are available in the schedule in respect of licensing of open space:
  - (a). "In the event of new or increased tax, rate assessment or outgoing of any description payable either by licensor or licensee being imposed in future upon the said premises by any other authority than the licensor to pay the new imposition, or the amount by which the present imposition, is increased as the case may be".
  - (b). "The rules and regulations framed by the Licensor from time to time shall be deemed to be part of the provisions of the licence".

Invoking these two clauses as and when new agreements were entered into, all the Government guidelines issued from time to time have been incorporated and signed by both the parties to the various agreements. In case of existing agreements as and when the guidelines issued, they are being incorporated.

3. Since the proposal is based on the guidelines issued by the Government and they had already been adopted by the CHPT, further consultation with users has not been considered to be meaningful.

4. With reference to the proposal of the CHPT, and based on a collective application of mind, the following position emerges:

- (i). This Authority has not yet formulated its own (common) guidelines relating to lease / licence of Port Trust properties. Till formulation of such guidelines, it has been decided to continue with the instructions already given to the Ports by the Government.

- (ii). The conditionalities proposed by the CHPT for inclusion in its Scale of Rates are based on the guidelines issued by the Government from time to time. In fact, these guidelines are already in operation at the CHPT, as admitted by it. Eventhough it could have continued with operation of such guidelines by invoking the residual provision in its Scale of Rates, the Port now wants to have an elegant arrangement of properly incorporating the provisions in the Scale of Rates.
- (iii). As has been mentioned above, the proposal is only for a formal incorporation of the provisions already implemented based on Government guidelines. Such an inclusion is also necessary to avoid any litigation on the legitimacy of the Port to prescribe conditionalities governing lease / licences. This Authority is, therefore, inclined to approve formal incorporation of the proposed conditionalities in the Scale of Rates. By way of abundant caution, it is clarified that this decision shall not be seen to amount to approval or disapproval of the guidelines issued by the Government.

The language of the guidelines issued by the Government is not very clear; and, at places, very cumbersome and self-contradictory. If this Authority modifies the formulations, it will call for a wholesale revision. In line with the approach of neither approving nor disapproving the guidelines, this Authority decides to insert the conditionalities in the Scale of Rates of the CHPT retaining the same language / formulation as prescribed by the Government.

- (iv). One of the conditionalities proposed relates to sub-letting. The CHPT has proposed that any sub-letting without the prior approval of the sanctioning authority of the lease will make the lease liable for termination. Conversely, this means that sub-letting is permissible if the competent authority in the CHPT approves it.

Earlier, while framing the Scale of Rates of the CHPT in March 2001, this Authority did not approve the provision empowering the Chairman (CHPT) to permit sub-letting of space allotted on monthly licence, etc. Since sub-letting is not permissible, this provision was deleted from the Scale of Rates. There is no necessity to re-introduce such a provision in the Scale of Rates by accepting the proposal of the CHPT in this regard.

The provision proposed by the CHPT has no doubt been drawn from the guidelines issued by the Government. The same guidelines also stipulate the following:

*“The leased property shall not be transferred by the lessee to any third party either by way of sub-lease, rent or any other means”.*

The CHPT has not proposed inclusion of this provision, perhaps considering it redundant if the provision about sub-letting proposed by

it is included in the agreement. Since the provision about prior permission of the competent authority for sub-letting has not been re-introduced, it will be appropriate to include the provision given above.

- (v). The Government guidelines (January 1998) contain the following provision, which the CHPT has not proposed for inclusion in its Scale of Rates:

*“Wherever the lands have to be allotted for a commercial activity which is open to both public and private sector, the PSU’s may also be required to participate in the competitive bidding process. But wherever the activity is restricted to the Government sector only like Import of Crude oil and certain petroleum products, the Port Trusts should consider the proposal either by calling competitive bidding between the Government oil companies only or should lease the land on the advice of the Ministry of Petroleum and Natural Gas / OCC”.*

Since a provision about allotment of land to PSUs for commercial activities is proposed to be included in the Scale of Rates, it is relevant to have the provision mentioned above which stipulates the condition for allotment of land which is available for commercial activities by both the public and private sectors.

- (vi). Another guideline issued by the Government (February 2000) stipulates that the Port will provide common user facilities like pipelines, etc., in the land leased. This provision has not been proposed for inclusion in the Scale of Rates by the CHPT and no reason for such exclusion has also been given. This Authority includes this condition, which is relevant to lands allotted on payment of premium on an upfront basis.
- (vii). This Authority has not yet formulated its own guidelines for lease of Port properties. This Authority has to initiate an exercise relating to formulation of such guidelines. The relevant issues involved will be discussed at the proposed second national level consultation with Ports and Port users to be arranged soon. Thereafter, finalisation of the guidelines will be considered.
- (viii). This Authority has already noted in some other cases (e.g., priority berthing charges) that the Government continues to issue guidelines / instructions to Ports on tariff matters even after the creation of the Authority in April 1997. In the instant case also, several guidelines have been issued after April 1997; and, unfortunately, the Government did not consider it fit to (at least) consult this Authority before issuing such guidelines. We have already brought to the notice of the Government about statutory provisions relating to ordering tariff arrangements. It is expected that this kind of lapses will not recur in future.

5. In the result, and for the reasons given above, and based on a collective application of mind, this Authority amends the Scale of Rates of the CHPT to incorporate the clauses proposed by the CHPT based on the guidelines issued by the Government subject to the specific amendments discussed in paragraph (4) above. Amendment to the Scale of Rates of the CHPT is **annexed**.

( **S. Sathyam** )

Chairman

**Annex**

The following conditions shall be added in Book II; Chapter-I B of the Scale of Rates of the CHPT after the heading "Schedule in respect of the Licensing of covered space other than Warehouse" :-

**I. Conditions to be included for Long Term Lease (General):**

- (a). The lease shall not be automatically renewable.
- (b). The lease rent shall bear an escalation at a rate of 5% (compoundable) per annum.
- (c). The Port Trust shall have an option to refix the base of lease every five years.
- (d). The lessee shall pay a premium equivalent to one year's lease rentals to the Port.
- (e). The lessee shall deposit an amount equivalent to one year's lease rentals as refundable Security Deposit with the Port which shall be maintained till the end of lease period or shall provide an irrevocable bank guarantee for an amount equivalent to three year's lease rentals which shall remain valid for the lease period.
- (f). The lessee shall create the facilities for which land/waterfront is leased within the time as may be specified by the Board of Trustees. In case lessee fails to do so, the lease shall be liable for termination.
- (g). The lessee shall obtain all statutory clearances as may be required by law including environmental clearance.
- (h). The leased property can be resumed at any time before the expiry of the lease period if required by the Government in the national interest by the Port for its own use with **six**months notice on payment of compensations in accordance with the formulations as may be approved by the Government. If the lease is cancelled for not complying with the conditions of the lease, no compensation shall be payable by the Port.

- (i). No compensation shall be payable by the Port in the event of refusal to renew the lease.
- (j). Whenever the land/waterfront is being given for the Port related activity(ies)/industry(ies) in accordance with the land use plan, a minimum guaranteed performance indicating the minimum guaranteed traffic, berth hire quantum shall be provided in the agreement. The time frame for achieving the minimum guaranteed performance shall be three years from the date of commissioning of the facility. In case lessee fails to achieve the minimum guaranteed performance, he shall be liable to pay the wharfage/berth hire charges,etc. for the minimum guaranteed traffic/berth hire.

In case, the lessee improves upon the minimum guaranteed performance, he shall be liable to pay the charges as per actuals.
- (k). If there are some genuine reasons like change in the Government policy regarding import/export of a particular commodity as a result of which the required throughput could not be achieved in a year, suitable relaxation may be made with the approval of the Government.
- (l). The lease shall be liable for termination if the lessee fails to pay the wharfage/berth hire charges, etc., for the minimum guaranteed performance for three consecutive years without any genuine reason.
- (m). Allotment of land within 500 Metres:

Allotment of land within 500 metres of waterfront shall be considered only for the activities as may be declared permissible by the Ministry of Environment and Forests, Government of India or any competent authority.
- (n). The lease premises may not be resumed in the normal course from the lessee except for the violation of the terms and conditions of the lease agreement.
- (o). The land to Government Department/Organisations may be allotted on scheduled rate only and the land to local bodies/development authorities for public purposes like construction of roads, bus terminal-cum-depots, schools (not run on commercial basis) may be allotted by charging 25% of the scheduled rate only.
- (p). The land/waterfront may be leased to a Public Sector Undertaking for commercial purpose at the prevailing market rates after examination on case-to-case basis.
- (q). Wherever the lands have to be allotted for a commercial activity which is open to both public and private sector, the PSU's may also be required to participate in the competitive bidding process. But wherever the activity is restricted to the Government sector only like

the Import of Crude oil and certain petroleum products, the Port Trust should consider the proposal either by calling competitive bidding between the Government oil companies only or should lease the land on the advice of the Ministry of Petroleum and Natural Gas/OCC.

- (r). The leased property shall not be transferred by the lessee to any third party either by way of sub-lease, rent or any other means.

**II. Conditions to be included for Long Term Lease allotted on premium up-front:**

- (a). The Port Trust will charge land premium up-front based on tender. In the case of captive facilities, the premium shall not be below the commercial value of the land either obtained through tender in the vicinity or notified by the Port.
- (b). The lease rental will be nominal value of Re.1 per square metre/year, with 30% escalation in the licence fee after every 5 years.
- (c). The lease agreement will not incorporate any clause for renewal of the lease.
- (d). The Port will obtain statutory clearance before giving effect to the lease agreements.
- (e). The Port will not insist on minimum throughput guarantees.
- (f). The common user facilities such as pipelines, etc., will be provided by the Port Trust.

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