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New Delhi, the 8th June, 2001

TARIFF AUTHORITY FOR MAJOR PORTS

NOTIFICATION

In exercise of the powers conferred by Sections 48, 49 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal of the Visakhapatnam Port Trust to fix the consolidated charges and conditions for transshipment of dry bulk cargo, as in the Order appended hereto.

(S. Sathyam)

Chairman

Tariff Authority for Major Ports

Case No. TAMP/4/98-VPT

The Visakhapatnam Port Trust (VPT) ... Applicant

O R D E R

(Passed on this 16th day of May 2001)

This case relates to a proposal submitted by the Visakhapatnam Port Trust (VPT) for fixation of consolidated charges and conditions for transshipment of dry bulk cargo and modification of the Order of this Authority passed on 22 August 97 prescribing a consolidated tariff for lightening operations carried out at the Visakhapatnam Port Trust (VPT) by a floating crane operated by the Emirates Trading Agency of Dubai [ETA (Dubai)].

2. This Authority had fixed a consolidated charge of Rs.3.50 lakhs per transshipment operation including port dues, pilotage fee, berth hire charges, night and holidays charges, etc. In the absence of any inputs from the VPT, this was done with reference to the consolidated charge available for liquid bulk cargo. This Authority observed that this was a case of introduction of a new facility and involved an innovative approach to handling of cargoes, and hence it was not possible at that stage to anticipate all the implications attendant to this new arrangement. This Authority, therefore, decided to review the position after six months to order appropriate changes that might be found necessary in the light of the experience gained.

3. In response to the Order dated 22 August 97, the VPT requested this Authority that the above Order fixing the consolidated charges for the operation on the representation of the ETA (Dubai) might be kept in abeyance for a period of three months. The VPT also informed that the issues relating to fixation of consolidated charges were under active consideration and a proposal in this regard would be submitted to the Authority shortly. The VPT was reluctant to implement the Order of this Authority dated 22 August 97. On the advise of the (then) Ministry of

Surface Transport (MOST), however, the VPT decided to comply with the Order; but, did not immediately send any revised proposal regarding the rates to be applied.

4. The ETA (Dubai), in the meanwhile, requested for further validation of the Order. The request of the ETA was considered by the Authority to decide that, under the law, any Order notified by this Authority would remain in force till it was altered. The reference in the Order of this Authority to a review after six months was only an expression of a wish to introduce appropriate changes with reference to experience gained. Since the new arrangement had not really been put into operation, no experience had been gained so far. This Authority, therefore, decided that there was no basis for a review; and, the original Order would continue to remain valid. The decision of this Authority was accordingly intimated to the ETA (Dubai) and the VPT.

5.1. As assured, the VPT submitted a proposal for fixation of transshipment charges for dry bulk cargo and consolidated charges and conditions for transshipment operations. The proposal contained consolidated charges of Rs.3.50 lakhs upto and inclusive of 3 lakh tonnes which were the same as approved by this Authority in its Order dated 22 August 97. The VPT also proposed to introduce a condition that the vessel should give 10,000 tonnes per berth day out put on weather working days. The VPT also proposed to give volume discounts and introduce certain other conditionalities to motivate better performance.

5.2. The proposal of the VPT was circulated to various users / representative body of port users for comments.

6. In the meanwhile, the VPT, vide its fax dated 6 March 99, sought certain clarifications on the following items:

(i). The Authority has mentioned about Mother Vessel and Daughter vessel in its Order dated 22 August 1997. Does this order apply only to gearless cape size or other vessels of any size depending only on the floating crane for discharge of the cargo?

(ii). If the Ship Owner nominates a vessel of any size and having discharging gear on board, shall this Order in question be applicable? Or, the deployment of the floating crane is mandatory for transshipment of dry bulk cargoes.

(iii). The Authority has fixed consolidated charge on cargo carried by Daughter vessels to other Ports, on the application of the ETA. As the enquiries are being received from several users, it is necessary to know whether the above charges are applicable uniformly to all other users other than the ETA.

(iv). It is a well established practice in all the ports in India and abroad when the regular discharge berth is not available or berth could not be used due to draft or length or both restrictions, the cargoes are discharged into the barges at moorings or other berths where discharge on the berth is not possible for the operational reasons. This is being termed as "over side discharge". This operation is being conducted by using either the ships equipment or floating crane of the port or both. In this case, all notified charges as per the Scale of Rates are being levied on the vessel as well as on the cargo. Several Ship owners / Agents are interpreting that over side discharge is similar to transshipment operations that is being carried out in terms

of Authority's order. They are also seeking similar dispensation for over side discharge on account of port charges and are insisting on collection of charges as fixed by the Authority for over side discharges. Incidentally, the over side discharge operation are carried out, not on regular basis. However, this is an established practice in all other ports and in particular at VPT. In the case of former, the charges are being collected as per notified rates and in case of later i.e. transshipment of dry bulk cargo, consolidated charges are being levied. This can be termed as discriminatory by the other ship owners.

(v). The Authority's Order is silent about size of the Daughter vessel. It is also not clear whether the Daughter vessel must necessarily be self propelled. Specific clarification is required whether the Daughter vessel can be a ship or a self propelled barge or a dumb barge of any size.

(vi). Is it mandatory for all users performing transshipment operations to use floating crane irrespective of the fact that the Mother Vessel of any size is gearless or with gear?

(vii). Should there not be a rate fixed for utilisation of floating crane and barges, to enable other users to use this facility? Such fixation of rate would facilitate other users to plan the viability to their operations. Once such rate is fixed can the port levy a reasonable royalty on per tonne basis?

7.1. It was observed that the issues on which clarifications were sought by the VPT would have substantial financial implications. It was, therefore, decided to conduct a joint hearing. Accordingly, a joint hearing was held at the VPT on 2 July 99. During the joint hearing the issues raised by the VPT were discussed and clarification were sent vide our letter dated 19 July 99 to the VPT.

7.2. The following clarifications were given to the VPT:

(i). It was not the intention of this Authority that the arrangement approved vide its Order dated 22 August 1997 should apply only to one party viz., the ETA (Dubai). What was approved was an innovative system and not a special facility for any particular operator. In other words, the Port itself or any other operator approved by it can take advantage of the arrangement approved by the TAMP. This position was clarified in the original order itself.

(ii). This Authority had not taken any arbitrary or unilateral step. Entry into the VPT of the floating crane in reference was approved by the Port Trust. This Authority only prescribed a tariff arrangement.

(iii). Deployment of a floating crane is not mandatory for transshipment of dry bulk cargo. Transshipment can be done with the help of a ship's own gear also.

(iv). The Order of the Authority dated 22 August 1997 does not specify the size or other characteristics of the vessel as a qualifying criterion. There is no restriction that the Order will apply only to gearless vessels or vessels of the cape size. In other words, the arrangement ordered will be available for application to any case of transshipment.

(v). The special arrangement envisaged will not ordinarily be available for 'overside operations' at berth. Extension of this facility to such operations will lend scope for exploitation

of situations resulting in considerable loss of revenue to the Port Trust (from berth hire and wharfage). 'Overside operations' will qualify for this special arrangement as 'transhipment operations' only when such operations are done at a non-workable berth for dry bulk cargo.

(vi). Although the word 'barge' has been used in the Order dated 22 August 1997, the intention is not to prescribe such a restrictive application of the arrangement. The intention is to apply the special arrangement to any 'lighter' irrespective of use of expressions like 'barge', 'daughter vessel', etc.

(vii). While prescribing the special (tariff) arrangements in reference, it was not the intention of the Authority to completely ignore efficiency parameters. Acceptable productivity levels have to be maintained. A sliding scale of (ascending) rates will apply over a period of time. The Authority will be willing to consider any proposal formulated in this regard by the VPT or any user/user organisation concerned.

(viii). If it is the intention of the VPT that the ETA (Dubai), being in a monopolistic situation at present, shall be subjected to regulation, then, it may make appropriate proposals in this regard for consideration by the Authority.

8. In the joint hearing held on 2 July 99, it was agreed that it would be useful to wait for two or three more trial operations before a review of the special arrangement was undertaken for the purpose of prescribing tariff in general for all "transhipment" operations of dry bulk cargo.

9. The VPT, in January 2000, sent its comments alongwith a revised proposal for consolidated charges for transhipment. The VPT reported the position with respect to the transhipment operations carried out. A summary of its report is given below:

(i). Two vessels arrived for transhipment of dry bulk cargo and transhipment operations were carried out during August to October 99. One iron ore vessel carrying 1,11,506 MT took 20 days to complete the operations. Another vessel carrying 52,500 MT wheat took 27 days to complete the operations, as against the norm of 12 days.

(ii). The VPT has fixed a norm of 10,000 MT per weather working day for transhipment operations involving dry bulk cargoes.

(iii). From the daily discharge transhipment particulars of these two vessels it has been observed that the performance of transhipment operation has been far below expectations and far below the norms fixed.

(iv). No other transhipment of dry bulk cargoes after September 99 has been carried out.

(v). From the experience gained from the transhipment of dry bulk cargoes, the performance of transhipment are seen to be below the norms fixed; the vessels stay more number of days than expected; and, turn round time of vessels has increased. In view of these reasons, the VPT has submitted a proposal suggesting revised consolidated charges for transhipment of dry bulk cargo in the outer Harbour for this Authority's consideration.

10.1. In the revised proposal, the following consolidated charges on mother vessel are proposed by the VPT, subject to the condition that the vessel shall give 10,000 tonnes berth day output per weather working day:

- | | | | |
|--------|--|---|---------------|
| (i). | For each call upto and inclusive of 3 lakhs tonnes. | - | Rs.8.50 lakhs |
| (ii). | For each call over 3 lakhs tonnes and upto 5 lakhs tonnes. | - | Rs.8.00 lakhs |
| (iii). | For each call over 5 lakhs tonnes and upto 8 lakhs tonnes | - | Rs.7.50 lakhs |
| (iv). | For each call over 8 lakhs tonnes | - | Rs.7.00 lakhs |

10.2. The VPT has also proposed three times the normal rate of notified berth charges per day or part thereof for all periods the mother vessels remain idle for any reason not attributable to the port.

10.3. A wharfage of Rs.6/- per tonne on the quantity of transhipped cargo and carried to other Ports (without discharge at the VPT) has also been proposed by the VPT.

10.4. All charges such as port dues, pilotage, berth hire, etc., are proposed to be levied on daughter vessels at the rates prescribed in the VPT Scale of Rates.

11. The proposal of the VPT was circulated to various users / Organisations. Comments received from the users / Organisations are summarised below:

Vizagapatam Chamber of Commerce and Industry (VCCI)

(i). The proposal for upward revision was made without taking into consideration the need for and the necessity of carrying out transshipment operations and better and fuller utilisation of facilities created at the outer harbour without incurring any Capital and maintenance expenditure.

(ii). The VPT has not discussed the various issues about utilisation, performance, output, etc., the future trend and steps taken to improve the output with the ETA or the VCCI or the Steel Authority of India Limited or the Visakhapatnam Steel Plant.

(iii). The VPT has also not given any opportunity to the Port Users and taken steps to seek clarification and obtain their views by presenting its proposal in the Board meeting.

(iv). From the facts available there is strong justification to continue to levy the charges at present level and also to show some more concessions to retain the equipments and attract additional traffic for handling at Outer Harbour.

(v). This facility was planned (mainly) for handling 1 lakh DWT Gearless Colliers for the SAIL and the VSP. By this system both SAIL and VSP can save considerable sum by reducing Ocean freight and the country can save considerable foreign exchange.

(vi). Even though the planned quantum of Coal has not materialised (because of various factors beyond control of ETA and Importers), the ETA continues to incur huge expenditure by keeping and maintaining the Crane and Barges without earning any revenue, with the hope that 1 lakh DWT Colliers will be deployed because of freight advantage.

(vii). Because of the floating Crane's availability, only Wheat and Iron Ore vessels are nominated for transshipment at the Outer Harbour which has resulted in utilisation of under utilised Port facilities and increased revenue for the Port without incurring any expenditure.

(viii). In the absence of these facilities there would have been either diversion or nomination of vessels with gear which can be handled only at inner harbour resulting in extra expenditure to importers.

The Food Corporation of India (FCI)

The FCI requested the MOST to send their comments to the TAMP as the vessels are being fixed by Government of India particularly on FOB terms.

M/s. Sarat Chatterjee & Co. (VSP) Pvt. Limited

(i). The norm of 10,000 MT per weather working day could not be achieved, possibly, due to the then fertiliser season, which occupied Inner Harbour East Quay side and unusability of West Quay side. There were restrictions in loading the available barges which had stability problems when loaded full.

(ii). The size of the sample for consideration being only two vessels, a bigger sample size might be considered before reaching a conclusion.

ETA (Dubai)

(i). Capesize vessel with 1,12,000 tonnes of iron ore was fixed by ESSAR from Brazil. The cargo had to be directly delivered (without intermittent storage in the port) to the Essar stockyard. This warranted for the trucks to move through the highly congested city roads which in fact had caused some low discharge rates on certain days. The vessel was chartered by Essar; and, because of their payment problems with the original owners, vessel discharging operations were stopped by the owners / handlers repeatedly for settling the payments. This also added to the fact that certain days the ETA could not complete the work. However, discharging capability of the system had exceeded 13,000 tons per day on normal days.

(ii). High discharging rates were only facilitated by their own self-discharging barges which discharged their cargo in the inner harbour from where the trucks could pick up and go directly to Essar plant without the need to pass through the township.

(iii). It is evident that, though the discharging capabilities are well above the expectations, the shore clearance and the transportation systems still have to be improved. With some more time, this should prove to cope with the faster floating crane's discharge rates.

(iv). The vessel M.V. Montauk, carrying about 53,000 tons of bulk wheat, was diverted from the JNPT for reasons of congestion and possible delays of upto 45 days. Though ETA barging and

transport systems are not equipped for wheat, they tried to help the importers. The cargo was discharged at GCB using the small barges and the cargo had to be routed through city roads to reach their respective storage godowns. The shortage of storage space also amounted to further delays and slow discharge rates. Weather delays and compulsory public holidays also aggravated the situation resulting in a long stay of this vessel.

(v). In both the cases, incidence of avoidable expenses by way of heavy demurrages was avoided, while the VPT was given the opportunity to handle such a large vessel for the first time. The owner and user were encouraged to divert the vessel to the VPT and avoid huge expenses and demurrage only because of the presence of this transshipment system available at the VPT.

(vi). Any such innovative systems will take a little time to settle; and, all the other connected services such as lighterage, lighter discharge and transportation will eventually have to pick up with maximum discharging / handling capacities of the transshipment system. The TAMP, may, therefore, consider applying these current rates without any modifications.

(vii). The ETA is currently effecting shipment on account of the Transchart; and, all the shipments with Transchart and the vessel owners are based on the present Tariff rates.

(viii). This present contract, unless option is exercised by the Transchart, will expire by July 2000. The ETA are discussing with the Transchart / SAIL / VSP for further shipments for a period of one year starting June 2000. All their calculations are based on the current rate of Tariff and any immediate change can adversely affect the viability of the operations.

(ix). The existing rates may be extended for atleast six months. By this period, the operation will stabilise and the TAMP and the VPT can re-evaluate with the operations to be carried out in this period.

12. Another joint hearing in this case was held on 3 April 2000. In this joint hearing following points were made:

Visakhapatnam Port Trust (VPT)

(i). We are against any subsidies (or cross subsidisation). Why should a public trust subsidise a private company?

(ii). In spite of many representation from us, the TAMP has still not fixed a proper tariff for ETA.

(iii). (a). Do not fix separate rates. Let the common rates prevail; and, a stated concession can be offered upfront. After all, the new system will make an otherwise unworkable Port facility productive.

(b). Government allows us 13.5% ROCE. Why should the VPT subsidise private parties to earn a much higher ROCE?

(c). Should there not be a ceiling on the ROCE of private parties? Will it not further increase with subsidies? There should be some way of estimating the capital employed. The TAMP must also decide on a reasonable ROCE for a private party.

(iv). (a). There will be a substantial freight differential when the bigger vessels that ETA will service (estimated at US \$ 5 PMT).

(b). Speed of operation and charter terms are substantially beneficial to the lines / shippers. The estimated gain is around US \$ 8 PMT.

(c). A part of this gains must go to other concerned agencies also.

ETA (Dubai)

(i). This is a private investment in an innovative facility. We have to generate traffic also. We have, therefore, to provide for risk also.

(ii). We thought, we would work for 200 - 240 days. But, we have been able to work only 90 days per year.

(iii). VPT says the ETA is a monopoly. But, who prevent others from investing?

(iv). Our performance is monitored and regulated by Director General (Shipping). Our 'charges' are approved by them.

(v). The importer will be ultimately pay for what we charge or what VPT charges. The customers interest have to be considered.

(vi). Look at the rates allowed by the Transchart for us. The rates quoted by the VPT are all wrong.

(vii). Government Organisation like SAIL and big private organisation like ESSAR ask for this facility. We do not choose the parties. They find merit in the arrangement.

(viii). Check with the Transchart about the difference between Capesize rates and Handimax rates. The Governmental agency will certify that.

(ix). We are willing to lease this crane to VPT. Let them operate it. We are not keen on earning exorbitant profits.

(x). We agree to the point about 'Ceiling rates'. Transchart fixes a consolidated rate and DG (S) 'approves' split-terms.

(xi). On daughter vessel, we pay every thing as per the Scale of Rates. On mother vessel we want 'consolidated charges'. If full charges are levied on mother vessels, then, the VPT will earn twice on the same cargo.

The Visakhapatnam Port Users Association (VPUA)

(i). The tariff offered is not concessional; it is more consolidated.

(ii). The VPT was originally avoiding. Then, they started supporting. Now after three years, they oppose. Very strange inconsistency.

(iii). We do not insist on separate rates. Let there be common rates with concessions for better performance.

(iv). Capesize vessels would not have come to the VPT without the ETA facility. This is an extraordinary achievement.

The Shipping Corporation of India (SCI)

The freight rate came down because of a global trend. The credit can not be given to ETA. The Port Users' Association has grossly exaggerated the merit of ETA facility.

The Rashtrya Ispat Nigam Limited (RINL)

ETA is a monopoly. Why give subsidy to them?

13. In the joint hearing it was agreed that it would be useful to wait for the outcome of the three trial runs slated for May - June 2000. It was also agreed that the ETA would produce documents relating to rate fixation ordered by the DG (S).

14. Since the ETA did not produce any documents relating to rate fixation ordered by the DG (S), despite several reminders, this Authority took up the matter directly with the DG (S). The DG (S) has sent a copy of their permission letter in respect of the foreign flag floating crane 'Diamond of Vizag' owned by the ETA (Dubai), and chartered by M/s. West Asia Maritime Limited, Chennai. The DG (S) has fixed US \$ 2 PMT as the rate of freight and US \$ 2000 per day, *prorata* as demurrage.

15. The ETA has submitted the discharging performance report on the mother vessels SEA VENUS II and KITSA, which were completed the discharge before 15 June 2000. In its report the ETA has stated that the effective discharge rate per day on the above two vessels are in the range of 13,000 – 13,500 MT. The ETA has stated that they are working the report for the third shipment which was completed on 21 July 2000. However, it has not submitted performance report on the third vessel so far.

16. The VPT has submitted its comments on the performance details given by the ETA. In its comments, the VPT has made the following points:

(i). The details and timings given by the ETA were compared with the details maintained with the VPT and it is observed that there are variations in the timings furnished by the firm. The average performance per day in respect of SEA VENUS II and KITSA is 6613 MT and 6048 MT respectively.

(ii). The norm of 10,000 MT per weather working day was fixed for all the vessels which have arrived in the VPT for transshipment of dry bulk cargo with floating crane from mother vessel to daughter vessels. These vessels have taken more than 20 days to complete the transshipment operations as against the norm of 10 - 12 days per vessel depending on the quantity and thereby the above vessels have stayed more number of days than the expected days, resulting in poor turnaround times.

(iii). The delay on account of VPT such as shifting of the floating crane, shifting of the vessel etc., are not at all delays, but the operational requirements consisting mainly of shifting from hatch to hatch not involving the VPT's help and norm of 10,000 MT per day was fixed duly keeping in cognisance all these aspects which are inevitable while performing such operations of transshipment of Dry Bulk cargoes. Much of the delay occurred because of placement of barges, internal shifting of floating crane from hatch to hatch, placement of poclairners etc., which are not attributable to the VPT.

(iv). The ETA could provide only dumb barges for the operation and these dumb barges could be moved only during day light hours loosing flexibility in operation.

(v). The consolidated tariff fixed by the TAMP has been yielding less revenue for the port trust and the VPT would have earned substantial revenue if normal tariff had been charged. However, by taking all aspects the VPT has propose to increase the tariff charges by using floating crane to the minimum for which proposal was already sent to the Authority which may be approved and notified.

17. After the joint hearing held on 3 April 2000, it was considered by this Authority whether the operation being carried out by the ETA fell under Section 42 (iii) of the MPT Act and whether a reasonable charge for this purpose could be fixed on the model of what was proposed by the MBPT for Terminal Handling Charges. The VPT was requested to examine whether the operation carried out by the ETA was covered under this provision of the Act and the rates to be charged by them from its customers could be so regulated. The VPT was also requested to suggest reasonable rates for this purpose. We have not received any response from the VPT in this regard despite of several reminders.

18. Yet another joint hearing in this case was held on 8 December 2000 at the VPT. In the joint hearing, the following points were made:

The Visakhapatnam Port Trust

- (i). TAMP applied 'liquid bulk' rates for 'dry bulk' operations which is incomparable.
- (ii). The system assumed a rate of discharge of 10,000 MT per day but only 6,000 MT per day is achieved. The rate is too low.
- (iii). ETA is a monopoly. Some one should regulate the rates they charge to their customers.

The ETA (Dubai)

- (i). We had improved over time. Average went upto 7500 and then to 8500. We even peaked to 11,000 Tonne once.
- (ii). We will give a written submission on other points by 15 December 2000.

19. The ETA (Dubai) has submitted that it has not received the VPT proposal for reviewing the consolidated charges on the mother vessels (a copy of the proposal was sent to the ETA on 7 February 2000). The ETA (Dubai) has added that the number of ships handled are few due the fact that Public Sector undertaking are slow to change.

20. The VPT has submitted a statement along with its general revision of Scale of Rates, showing the difference between the consolidated charges and the notified rates on mother vessel in the case of crude oil, coking coal and wheat. The Port has explained by working out charges at notified individual rates on certain specific mother vessels carrying coking coal and wheat that the proposed consolidated rate is more than a 50% concession in tariffs.

21. With reference to the totality of information collected during the processing of this case, and taking into account the arguments advanced at the joint hearings, the following position emerges:

(i). This case relates to a proposal received from the VPT for levy of a consolidated charge on mother vessels in cases of transshipment of dry bulk cargo.

(ii). The prominent references to the floating crane of the ETA (Dubai), almost amounting to a linkage of this proposal to the ETA floating crane are present because of the fact that the ETA (Dubai) first raised, at the time of introducing their floating crane, the concept of levy of a consolidated charge in transshipment cases of dry bulk cargo.

Incidentally, there is a separately registered case relating to the ETA's floating crane. After this Authority passed an Order on 22 August 97 in that case, it has been kept in suspended animation for revival for a review of the order at an appropriate time after accumulation of relevant experience in implementing the concept of a consolidated charge for transshipment of dry bulk cargo. Since the issues involved are exactly the same, the Order (to be) passed by this Authority in this case will also govern the case pertaining to ETA (Dubai).

In the case of ETA (Dubai), this Authority had specifically indicated that the Order of 22 August 97 would be reviewed with reference to experience to be gained in operating the arrangement prescribed. Although not much of practical experience has been gained in such operations, the deployment of the ETA floating crane has definitely given rise to a new type of activity and, experience of working this arrangement at least in respect of three or four big vessels is available for consideration. Furthermore, the VPT which was unresponsive to the whole affair initially has lately been taking interest in the matter; and, has actually submitted a specific proposal of a new tariff arrangement. Viewed in this backdrop, this Order itself can be seen to be a review of the interim/ad-hoc arrangement prescribed earlier.

(iii). When this subject was broached initially in the context of the ETA application, the VPT just would not respond to this Authority's communications. In the circumstance, in the total absence of any inputs from the VPT to consider and evaluate the ETA proposal, this Authority was compelled to apply the tariff arrangements relating to handling of liquid bulk cargo. It was only an ad-hoc/interim arrangement. Even so, it was not an appropriate arrangement from this Authority's point of view. It is, therefore, good that the VPT has now joined the proceedings as an interested party and has actually submitted a specific tariff proposal to govern cases of transshipment of dry bulk cargo.

(iv). This Authority had gone out of its way in August 97 to support the ETA's floating crane case for the reason that it involved introduction of an innovative arrangement that would lead to an augmentation of the cargo handling capacity of the Port. But, it has to be recognised that

operators of such facilities must not be given the liberty to have a run on the port's facilities in the name of introducing an innovative facility.

In this context, the following issues deserve to be singled out for specific mention:

(a). Functioning of any innovative system must also be subject to efficiency considerations. In other words, performance standards have to be prescribed as conditionalities governing the tariff.

It is noteworthy that the VPT has proposed a performance standard of 10,000 MT per day. That this standard can be realised is established by the fact the ETA (Dubai) itself had gone upto a performance level of 13,000 MT per day. But, what is of essence is that such a facility must achieve a sustained level of performance according to the norm and not just occasional peaking performances at or above the prescribed level.

On this count, the ETA (Dubai) cannot be set to have performed well. Their sustained performance has been at a level much lower than the 10,000 MT mark.

(b). The innovative facility shall not be in the form of a monopolistic arrangement lending scope for exploitation of the concessions given and special access provided.

It is relevant in this context to recognise that neither did this Authority Order the ad-hoc/interim arrangement exclusively for the ETA (Dubai) nor has the VPT proposed the concessional tariff package especially for any particular user. As has been stated in point (i) under paragraph 7.2 above, this issue was clarified in this Authority's letter to the VPT dated 19 July 99. This Authority had stated as follows –

“What was approved was an innovative system and not special facility for any particular operator. In other words, the port itself or any other operator approved by it can take advantage of the arrangement approved....”

(c). The VPT's contention is reasonable that, since this is a special facility and a concessional arrangement, someone must regulate the rates that the concerned operators charge to their customers so that they do not end up exploiting the arrangement to gain double benefit.

In this case the ETA's charges have been regulated by the DG (Shipping). It will be reasonable for the Authority to require all such operators to get their rates so regulated by the DG (Shipping). Alternatively, it should be possible for the Authority itself so to regulate in terms of the provisions in Section 42 of the MPT Act.

It has to be pointed out here that the conduct of ETA (Dubai) has not exactly been responsive or responsible in this context. In spite of specific requests emanating from two joint hearings and notwithstanding several written and telephonic reminders from the office of this Authority, no information was furnished about regulation of their charges by the DG (Shipping). Ultimately, the office of this Authority had to collect the information directly from the DG (Shipping).

(d). The innovative system cannot be left open ended which may lend scope for exploitation of situations resulting in considerable loss of revenue to the port. The clarifications given to the VPT in this Authority's letter dated 19 July 99, therefore, specifically recognised by this Authority as conditionalities to be prescribed in such cases to govern application of the tariff in reference.

(v). Admittedly, this case has been pending since October 1998 when the (first) proposal of the VPT was received. Likewise, the review of the Order passed in the ETA (Dubai) case has also been pending since long for introduction of appropriate changes with reference to experience (to be) gained. But, this Authority cannot at all be blamed for any delay in these cases.

Since the new arrangement ordered in the ETA (Dubai) case was not really put into operation, no experience was gained; and, there was, therefore, no basis for a review. And, it was specifically agreed by all concerned at the joint hearings that the case should be kept in abeyance until at least three trial runs could take place.

The VPT proposal of October 1998 was also recast by it in January 2000 resulting in a fresh scrutiny. Also, as earlier stated, this proposal got linked to the ETA (Dubai) case and was to be evaluated with reference to results emanating from the 3-4 trial runs thereunder. That being so, it will be futile for the VPT to agitate the issue that this Authority has taken very long to fix a proper tariff in this (and, in the ETA Duabi) case. Incidentally, the time taken to decide these cases have not been of any significant financial implication since, as already stated, there have only been three vessels (since August 97) doing transshipment operations of dry bulk cargo.

(vi). In the ad-hoc/interim arrangement Ordered by this Authority in August 97, in the absence of any inputs from anywhere (including the VPT), this Authority was compelled to accept the suggestion of the ETA (Dubai) that the model prescribed for liquid bulk cargo could be adopted. But, this was not a happy arrangement as tariff rates for 'liquid bulk' and 'dry bulk' operations are not comparable. This situation is, however, cease to exist once a decision is taken on the VPT proposal which will apply to all cases of 'dry bulk (transshipment) operations' including the case of the ETA (Dubai). In other words, the tariff arrangements specially ordered in the context of the application of the ETA (Dubai) has been superseded by the common arrangement ordered in this case. By way of abundant caution, a separate Order to this effect has also been passed in the case of the ETA (Dubai).

(vii). The Visakhapatnam Chamber of Commerce and Industry has complained that neither the Board of Trustees was taken into confidence nor were the trade/users consulted. As has already been pointed out, as a part of processing this case, there have already been three joint hearings besides an elaborate consultative process through correspondence. The complaint about lack of consultation cannot, therefore, be of any material significance at this stage of the case.

As regards taking into confidence the Board of Trustees, the law does not require the port trust authorities to go to their Board of Trustees for tariff matters. They are at liberty to approach this Authority directly. That being so the VPT cannot be accused of any wrongdoing. It has been the stated position of this Authority that, although the law does not require tariff proposals to be routed through the Board of Trustees, it will only be happy if tariff proposals are indeed sent by the port trusts either with the approval of the Board or (at least) with their comments. Nevertheless, it has to be recognised that this Authority does not have the authority to give any directives in this regard to the port trusts.

(viii). The VPT and the Visakhapatnam Port Users Association have both strongly pleaded for prescription of 'common rates' with concessions for better performance instead of fixing separate rates for separate operators.

This issue has already been addressed in paragraph (iv) b above. It has been made amply clear by this Authority that what was approved was an innovative system and not a special facility for any particular operator. Significantly, this position was clarified in the original Order (of 22 August 97) itself. Once a decision is taken in this case and a tariff is notified, the 'common rate' will be applicable in supersession of the ad-hoc/interim arrangement ordered in the case of the ETA (Dubai).

As regards concessions for better performance, the VPT's proposal incorporates not only a performance standard of 10,000 MT per weather working day but also a sliding Scale of Rates to accommodate volume discounts. These two aspects of the proposal deserve to be commended and approved.

(ix). The Shipping Corporation of India has observed that the VPUA has grossly exaggerated the merit of the ETA facility. This observation has apparently been made in the context of entry of capesize vessels.

It will be relevant in this context to note that the Order of the Authority does not specify size or other characteristics of the vessel as a qualifying criterion. There is no restriction that the Order will apply only to gearless vessels or vessels of the capesize. In other words, the arrangement ordered will be available for application to all cases of transshipment.

What is of greater relevance in this arrangement is to recognise the fact that the new system will make an otherwise unworkable port facility productive.

(x). In defence of its poor performance, the ETA (Dubai) has cited that various factors concerning the VPT (e.g., inadequacies in shore clearance and transportation systems), ESSAR (e.g., their own internal payment problems), etc. It must be recognised in this context that incidence of the responsibility for achievement of performance standards shall always rest with the operator concerned. The ETA (Dubai) cannot, therefore, be allowed to pass on to others the responsibility for its failure to achieve the performance norms. It is noteworthy that the VPT has also substantively countered its contention pertaining to inadequacies at the port level.

(xi). (a). The VPT proposal seeks to raise the 'consolidated charge' from Rs.3.5 lakhs to Rs.8.5 lakhs for the first block of traffic volume. As has been pointed out in paragraph 20.1 above the VPT has claimed that this (proposed) consolidated rate amounts to more than a 50% concession in tariffs.

This claim of the VPT can be seen to be justified if we take into account only the charges relating to the mother vessel. In such a case, in fact, the concession can even be seen to go upto 90%! But, it will have to be recognised in this context that the VPT has collected additional revenue from the 'daughter vessels'. As can be seen from the details now furnished by the VPT, the earnings from the daughter vessels have been substantial. Even so, the overall concession works out to anywhere from 25% to 40% which cannot be said to be insignificant. The rates proposed and the sliding scale suggested are, therefore, accepted.

(b). The VPT has also proposed three times the normal rate of notified berth charges per day or part thereof for all periods the mother vessel remains idle for any reason. This proposal is also worthy of acceptance from an efficiency prospective. But, this Authority decides to order two modifications – since the unit of berth hire has been changed to eight hours, the entry must

read “...per eight hours or part thereof” instead of “...per day or part thereof”; and, in line with this Authority’s stated position that no user shall be required to pay for delays not attributable to him, the entry must read “,,, for all periods the mother vessel remains idle for reasons attributable to the user” instead of “... for all periods the mother vessel remains idle for any reason”.

(c). A wharfage of Rs.6/- per tonne on the quantity of transhipped cargo carried to other ports ‘without discharge at the VPT’ has also been proposed. This also is approved.

(d). The VPT has requested that all charges such as port dues, pilotage, and berth hire shall be leviable on daughter vessels on the rates prescribed in its Scale of Rates. This is a reasonable request. This, infact, is the existing practice everywhere. This is prescribed as a conditionality.

(xii). There can be a point that the basis of calculations of these rates has not been indicated. It has to be recognised in this context that none of the users including the ETA (Dubai) and M/s. Sarat Chatterjee & Co., who must have a special interest in this matter, have had anything to say about it. As against this, the VPT has been able to produce details to show that this consolidated charge involving concessions provides substantial savings of the order of 25% to 40%.

22.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the proposal of the VPT as detailed below:-

(i). Consolidated charges shall be levied on each call of a mother vessel subject to the condition that the vessel shall give 10,000 tonnes berth day output :

(a).	Upto and inclusive of 3 lakhs tonnes.	-	Rs.8.50 lakhs
b).	Over 3 lakhs tonnes and upto and inclusive of 5 lakhs tonnes.	-	Rs.8.00 lakhs
(c).	Over 5 lakhs tonnes and upto and inclusive 8 lakhs tonnes	-	Rs.7.50 lakhs
(d).	Over 8 lakhs tonnes	-	Rs.7.00 lakhs

(ii). Three times the normal rate of notified berth hire charges per eight hours or part thereof shall be levied for all periods the mother vessel remains idle for reasons attributable to the user.

(iii). A wharfage of Rs.6/- per tonne shall be levied on the quantity of transhipped cargo and carried to other Ports (without discharge at the VPT).

(iv). All charges such as port dues, pilotage, berth hire, etc., shall be levied on daughter vessels at the rates prescribed in the VPT Scale of Rates.

22.2. The consolidated charges includes both vessel-related and cargo-related charges. Going by the system applicable to cargo-related charges, these rates are determined to come into effect immediately after their notification in the Gazette of India.

23. The rates so approved in this case are allowed to be adopted for all computational purposes in the case pertaining to general revision of the VPT Scale of Rates which is separately considered today by this Authority.

(S. Sathyam)

Chairman

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