

**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 disposes of the proposal of the New Mangalore Port Trust for approval of Scale of Rates for semi-paved stackyard on short term licence basis as in the Order appended hereto.

( S. Sathyam )

Chairman

**Case No.TAMP/31/2001-NMPT**

New Mangalore Port Trust Applicant - - - -

**O R D E R**

(Passed on this 5<sup>th</sup> day of November 2001)

This case relates to a proposal received from the New Mangalore Port Trust (NMPT) for approval of Scale of Rates for semi-paved stackyard outside the security compound wall on short-term-licence basis with retrospective effect from 20 February 2000.

2.1. The NMPT has made the following points in support of its proposal:

- (i). In pursuance of a request from the port users, it has constructed two semi-paved (WBM surface) stackyard at an investment of about Rs.70 lakhs for stacking of import/export cargo in the port premises.
- (ii). These stackyards are allotted to the port users on a month to month license basis for stacking of imported coke and coal on payment of a provisional licence fee @ Rs.600/- per 100 sq. meter per month i.e. at the rate fixed for the open space, as no separate rate has been in existence for the semi-paved area.
- (iii). The cost sheet compiled indicates a figure of Rs.878/- per 100 sq. meters per month, calculated in accordance with the guidelines prescribed under Fundamental Rules (FR) 45B (III) in respect of government constructed building.

- (iv). The proposal was accorded an ex-post-facto approval by the Board of Trustees of the NMPT in its meeting held on 29 January 2001.

2.2. In this backdrop, the NMPT has requested the Authority to approve a rate of Rs.880/- per 100 sq. meter per month as the licence fee for the semi-paved (WBM Surface) stackyard in the port premises retrospectively from 20 February 2000 with the following main stipulations:

- (i). Escalation @ 5% compounded annually as per the approved provisions in the Scale of Rates.
- (ii). Option to re-fix the base rate after every five years.
- (iii). Collection of a security deposit equivalent to one month's licence fee.

The NMPT has also forwarded a detailed statement of conditions governing licensing of the semi-paved stackyard.

2.3. The NMPT, after four reminders, furnished a list of the main users of the stackyard vide its letter dated 29 May 2001.

3.1. In accordance with the procedure prescribed, a copy of the proposal was forwarded to all the concerned port users/representative bodies of port users for comments. The comments received are summarised below:

Worldwide Shipping Inc. (WWS)

- (i). As there was no suitable stackyard in the port area for storage of coal / coke and, the import of coal/coke was expected to increase considerably in the near future, the port was advised about developing of a suitable stackyard within the port area as early as in the second half of 1997.
- (ii). The existing land available for stacking of coal / coke is filled with the dredged sand and at most of the places it is water logged as against the requirement of hard surface area. The area could have been hardened with murrum and compacting instead of developing semi-paved area leading to an infructuous expenditure.
- (iii). The semi-paved stackyard is not at all suitable for stacking of the coke/coal, as the cargo gets adulterated with the metal used for paving, creating problems to the end-users as well as the C&F agents; however, in the absence of availability of any other suitable yard at the port, this yard is being used.
- (iv). It is a responsibility of the port to provide the required infrastructure for the benefit of port users at reasonable costs. The expenditure incurred on either creating new infrastructure or improving the existing facilities at the cost of the port users is not justified. This will force the

port users to opt for the neighbouring ports for operating their business, where facilities are available at reasonable cost.

- (v). The land rent charged is much higher as compared to the other ports. At one point of time, the rent charged was Rs.6250/- per acre, which was increased to as high as Rs.26000/- per acre in the year 1996 (an increase of 316%) and again with 5% increase every year, presently it sums up to an amount of Rs.29550/- per acre.
- (vi). Considering the facts narrated above, the NMPT be advised not to penalise the users by increasing the lease rent of the stackyard.

New Mangalore Port Clearing & Forwarding Agents' Association  
(NMPC&FAA )

- (i). The area allotted for stacking of coal/coke outside the perimeter wall of the Port was earlier a paddy field filled with dredged sand which used to get water logged in monsoons. It is incumbent on the part of the port to provide a suitably developed area for coal / coke just as for any other cargo landing from the ship. The NMPT also charges wharfage in addition to the land rent for providing these facilities.
- (ii). The proposed licence fee of Rs.880/- per 100 sq. meters per month is too excessive. At this rate, the monthly licence fee for one acre (4046.86 sq. meters) comes to Rs.35612.37/- and the annual licence fee per acre alone will be Rs.427348.44/- which is far too excessive to be charged, especially if compared to the cost of the newwater logged in monsoons. It is incumbent on the part of the port to provide a suitably developed area for coal / coke just as for any other cargo, landing from the ship. The NMPT also charges wharfage in addition to the land rent for providing these facilities.
- (ii). The proposed licence fee of Rs.880/- per 100 sq. meters per month is too excessive. At this rate, the monthly licence fee for one acre (4046.86 sq. meters) comes to Rs.35612.37/- and the annual licence fee per acre alone will be Rs.427348.44/-, which is far too excessive to be charged, especially if compared to the cost of the nearby industrial land, which is estimated to be around Rs.10 lakhs per acre.(The total land involved as per the proposal of NMPT is 28910 sq. meters i.e. 7 acres and 14 cents.)
- (iii). The basis of arriving at the cost of land @ Rs.475 per sq. meter has not been explained. The cost of entire land at this rate works out to Rs.19,22,258.50 per acre as against the cost of nearby industrial land @ Rs.10 lakhs per acre.
- (iv). The actual cost has to be worked out on the following basis:
  - (a). Expenditure incurred by the port at the time of acquisition of land, which is before 1975.

- (b). Cost of improvement effected by the port.
  - (c). Normal simple interest on the cost of acquisition from the date of payment of compensation to the affected persons.
  - (d). Normal simple interest on the cost of improvement effected by the port from the date of actual payment made.
  - (e). From the total amount arrived at by adding items (a) to (d) above, the amount received by the port by way of lease and licence fee so far, has to be deducted and the resultant amount can be taken as capital cost.
- (v). The capital cost of development is Rs.72.22 lakhs. Even after so much of an expenditure, the stackyard paved with loose metal causes adulteration.
  - (vi). An amount of Rs.25.15 lakhs has been considered in the cost sheet by taking into account DC at 23.75% and 12%, which is not explained.
  - (vii). No proper explanation is given for taking into account various elements mentioned in the serial numbers from 10 to 13 in part 1 of the cost sheet relating to interest, MR, SR, etc.
  - (viii). The rate of penal interest proposed at 24% p.a. on the accumulated arrears is too high. The rate should be prescribed as 18% p.a. in line with the recent Order of the TAMP on penal interest on delayed payments.
  - (ix). Licence fee to be increased at a uniform rate of 5% every year and the base to be re-fixed after every 5 years is too harsh a measure. If it is proposed to charge extremely heavy licence fee, appreciation of 5% (that too compounded) is too much burden on a port user.
  - (x). The proposed licence fee with retrospective effect from 20 February 2000 will entail too many difficulties to all concerned for the recovery of arrears of licence fee, as the port users who have already paid the licence fee due to the port for the use of land, have received from their principals the same amount of licence fees paid by them. It is, therefore, requested to approve the rate prospectively only.
  - (xi). The land rentals were increased from Rs.3750/- per acre (Rs.92/- per 100 sq. meters) in 1987 to Rs.29550/- (Rs.730/- per 100 sq. meters) in 2001, i.e. an increase of 688% in rentals alone. This was achieved by re-fixing the base levels considering the outside real estate market values when the real estate market was very high; and, increasing the rentals @ 5% compounding yearly. The rentals have not been down proportionately with repeated crashing of the real estate values later.

- (xii). Recently, a developed asphalted area of 12510 sq. meters (about 3 acres), has been allotted by the port on a monthly rent of Rs.7216/- per acre (i.e. Rs.178/- per 100 sq. meters per month) to an outside party for use as a truck parking terminal. The facilities include a compound wall, office, telephone, wash and bath facilities and lighting; whereas, the port users of granite, timber, etc. are allotted bare, undeveloped land without compound wall, office or lighting for as much as Rs.29550/- per acre (Rs.730/- per 100 sq. meters) per month.

Hence, there is a clear case for reducing the monthly rentals of port land and stackyards to a much lower levels for all cargoes.

- (xiii). There has been a diversion of timber cargo imports from the NMPT to the Mumbai Port due to low rentals prescribed at the Mumbai port for the land allotted. Granite traffic has already come down from 5.75 lakhs tonnes a year to about 2 lakhs tones; and, paved stackyard of the port is mostly unutilised due to its exorbitant charges.
- (xiv). The NMPT shall bring down all the land rentals for inside and outside the perimeter wall to a reasonable and attractive levels in this present competitive scenario.

### **Sri Ganesh Shipping Agency (SGSA)**

- (i). The proposal of the port be viewed amicably.
- (ii). Fixing a special rate for semi-paved area on the basis of total expenditure involved is not correct. The area is being utilised for stacking and handling of Coal/Coke and bagged wheat, which are sensitive bulk commodities. If the port gives special treatment to a particular cargo, it will improve the turnover of that cargo / trade through the NMPT.
- (iii). Already the NMPT is levying Rs. 29,542/- per acre / month on semi-paved area which is reasonable.
- (iv). The volume of general cargo handled at the port has reduced drastically mainly due to high cost of handling and other charges.
- (v). The lease rent charges must be lesser than the prevailing market rate for the land available adjacent to in and around the port area at Panambur.

### **Kanara Chamber of Commerce & Industry (KCCI)**

In addition to reiterating the points made by the users about the ports' responsibility to provide adequate infrastructure at reasonable rates; the exorbitant increase effected in the port land rentals from 1989 to till date; and, about the state of the earlier stackyard used by the port users, the points made are summarised below:

- (i). The basis of calculation of the stackyard rentals are skewed.
- (ii). The trade through the NMPT has dwindled in the past few years. In fact, export of goods from Karnataka (including those from Mangalore) is done through ports such as Cochin, Chennai and Tuticorin on account of high cost and inadequate facilities at the NMPT. The NMPT desires to hike the rate based on fictitious data without considering these facts.
- (iii). The cost of development of semi-paved yard has been arrived at about Rs.10 lakhs per acre; whereas, the normal rate of laying semi-paved surface (WBM) including filling, as estimated by the architects and builders, who are members of the Chamber, is approximately Rs.5.1 lakhs per acre. This is twice the normal estimated cost has been considered by the NMPT means in addition to the DC (departmental charges) of 23.75% and 12%.
- (iv). Presently, the land rates at Bykampady, the area adjoining port stackyard, are Rs.10 lakhs per acre for the developed land; whereas, the cost of land has been indicated at Rs.1928687/- per acre in the cost sheet (Rs.13732250/- for 28910 sq. meters) without taking into account the departmental charges.

It is understood that the said land had been acquired at a low price of Rs.4000/- per acre; and, at that rate the value of the land in question (about 7.12 acres) comes to only Rs.28480/-. Hence, adoption of an imaginary value of Rs.13732250/- for the said land is ridiculous, unconscionable and against the interest of the NMPT itself in long run.

- (v). The allotment of a developed land to be used as a Truck Parking Terminal at a monthly rental of Rs.178/- per 100 sq. meter indicates that the semi-developed land cannot be offered at rentals of more than Rs.178/- per 100 sq. meters. The policy of the NMPT to charge unreasonable rates for the services rendered due to the monopoly enjoyed by it, will further wean away the business from the Port.
- (vi). The departmental charges @ 23.75% and 12% on the construction of the semi-paved stackyard are very high and unreasonable.
- (vii). It is suggested to fix the standard rate at Rs.178/- per 100 sq. meters for the semi-paved area, though the facilities offered to the users are much less than those given to the users for the developed land or alternatively the rentals may be worked out as stated below:
  - (a). The expenditure shown by the NMPT as development cost of the stackyard at Rs.7222321/- can be taken as it is to avoid infructuous arguments on the subject.
  - (b). The cost of land (7.12 acres) may be taken @ Rs.4000 per acre (at the time of its original acquisition) at Rs.28480/-, and

the total amount arrived at by adding (i) & (ii) i.e. Rs.7250801/- may be taken into account for calculation of rent.

- (c). The development charges @ 23.75% and 12% need not be considered as no supervision to the extent of abovementioned percentages was involved for the work given on contract.
- 3.2. A copy each of the comments received from the above port users is attached as Annex- II, III, IV and V respectively.
- 3.3. A copy each of the comments received from the above user organisations was sent to the NMPT as feed back information.
4. The NMPT has responded to the comments made by M/s. Worldwide Shipping Inc., the New Mangalore Port Clearing & Forwarding Agents' Association and the Kanara Chamber of Commerce & Industry. A copy of its letter dated 27 September 2001 is attached as Annex-VI. The points made by the NMPT are summarised below:
  - (i). The expenditure incurred on the WBM surface has to be recovered by leasing of the area. As such it may be difficult to allow any concession over the proposed rate of Rs.880/- per 100 sq. meters per month.
  - (ii). In the year 1996, the land rentals were fixed on the basis of the then market rate prevailing (i.e. Rs.19.15 lakhs per acre) in the adjacent villages like Bangra Kulur, Baikampady, Kulai, etc. Even if the rate of Rs.475/- per sq. meter (as provided in the calculation) is considered, the market rate of the land comes to Rs.19.22 lakhs per acre; and hence, considering this aspect also, any concession over the proposed rates cannot be allowed.
  - (iii). The departmental charges of 23.75% and 12% on the total cost are adopted as per the norms specified under the FR 45B prescribed for the Government constructed Buildings. The statement made by the New Mangalore Port Clearing & Forwarding Agents' Association on the availability of adjacent land of KIADB at Rs.12 lakhs on an outright purchase cannot be considered relevant as the present land available with the KIADB is far away from the National Highway and also it needs 3 to 4 meters of earth filling, compaction, etc.; whereas, the land available with the NMPT is a motorable land except for few days of heavy down pour.

5.1. A joint hearing in this case was held on 3 October 2001 in New Mangalore. At the joint hearing the following submissions were made:

**New Mangalore Port Trust (NMPT)**

- (i). The Board of Trustees of the NMPT has approved the proposal.
- (ii). The calculations are as per standard format given by the Government.
- (iii). The cost of undeveloped land @ Rs.475/- per sq. meter was recommended by the Committee, based on which revised rentals were notified in the year 1996.
- (iv). Semi-paved area is not at all suitable for long-term lease; it is only for short-term (monthly) lease.
- (v). Even the TAMP guidelines allow for 18% ROCE. At that rate, the lease rent will come much more.
- (vi). The land was allotted for truck parking at a rent @ Rs.178/- per 100 sq. meter as a social obligation under pressure from the District Administration for easing pressure on traffic. That example cannot be compared with a lease or licence arrangement.
- (vii). At the proposed lease rent rate of Rs.8.78/- per sq. meter, there is only Rs.1.50/- per sq. meter as departmental cost.
- (viii). Users are able to stack upto 15' high only because of the hard surface provided.

#### **Kanara Chamber of Commerce & Industry (KCCI)**

- (i). They have not given the market value, but taken the cost of land. As this is a service provided by the port, full cost shall not be taken.
- (ii). In the year 1997, the land values peaked; now, they have declined. They must take into account the present rates.
- (iii). What is the element of the supervision to justify DC @ 12%?
- (iv). At current market value, 33% is being charged as annual rent, which is too exorbitant. Where is the service orientation?
- (v). The construction cost cannot exceed Rs.5 lakhs per acre including filling up. They are charging more than Rs.10 lakhs.
- (vi). As regards the truck parking area, the trucks are not going to the port; they are mostly (if not all) MRPL traffic. Where is the social obligation?

#### **Worldwide Shipping Inc. (WWS)**

- (i). We are using this land because we have no option. This land is quite unsuitable.



- (ii). The NMPT has reduced wharfage on coal from Rs.60/- to Rs.30/- per tonne because at that time near by ports were charging even less.
  - (iii). How can you revise retrospectively? My 'principals' have paid and gone. How will I recover?
- 5.2. The NMPT has also furnished a copy of the executive summary of a feasibility study on container handling and general cargo handling with traffic projections up to 2020, conducted by Howe (India) Pvt. Limited, in March 2000. The report indicates that using front-end-loaders and 10-tonne trucks, a single continuous stock-pile will have a capacity of 48,000 MT with a height of 4 mtrs. A copy of the relevant portion of the report, as furnished by the NMPT, is attached as Annex-VII.
6. With reference to the totality of information collected during the processing of this case, the following position emerges for consideration:
- (i). The existing Scale of Rates of the NMPT contains rates for fully developed lands (Rs. 1300 per 100 sq. mtrs per month) and open space (Rs. 600 per 100 sq. mtrs. per month). The rate of Rs. 880 per 100 sq. mtrs per month proposed for semi-paved lands may seem to fit in well within these two points. Nevertheless, the proposed rate will need to be justified on its own with reference to the related costing details.
  - (ii). Generally, ports allow storage of cargo inside their premises either on transit terms or rental terms. Under transit terms, demurrage is normally levied on the basis of the weight / volume of the cargo stored whereas the earmarked area is licensed for a specific period for storage of goods under rental terms and the licence fee is levied irrespective of the quantum of cargo stored. For storage of bulk cargo, it may be beneficial to the users to opt for rental terms. The NMPT has provided such a facility for storage of cargo by developing a semi-paved stackyard. The NMPC&FAA's reference about payment of wharfage to the NMPT is not at all relevant to the issue of fixing licence fee for land to be allotted for storage of goods. Wharfage paid on cargo does not include storage of goods in Port premises beyond the stipulated free time allowed for clearance / shipment.
  - (iii). Many of the users have expressed their reservation over the suitability of the semi-paved stackyard for storage of coal. It is noteworthy that this facility has been in use for nearly 2 years now. The NMPT has categorically mentioned that a stack height of 15' is achieved only because of the hard surface provided. It has also substantiated its claim by quoting from the reports of an outside consultant. Be that as it may, the NMPT has incurred an expenditure in providing WBM surface in the stackyard at an investment of about Rs. 70 lakhs. Further, the stackyard in reference cannot be equated with an unpaved open

storage space. That being so, there cannot be any objection to fixation of a separate licence fee for the semi-paved stackyard.

- (iv). The KCCI has suggested fixing the licence fee for the semi-paved area with reference to the rate allowed by the NMPT for the land being used as truck terminal. The NMPT has already indicated that such a reference is not logical since the truck terminal has been developed to meet a social obligation under exhortation of the local traffic authorities. There is no reason why a concession granted elsewhere, that too under social obligation, shall be a guiding factor for fixation of licence fee for the stackyard used for commercial purposes. It is also relevant here to mention that the users of semi-paved stackyard will not be cross-subsidising the activity at the truck terminal because of the concession granted by the NMPT. The costing details furnished by the NMPT are all with reference only to the investment and other expenditure related to the semi-paved stackyard.
- (v). Estate being a precious asset, it has to be managed properly for optimum commercial exploitation. The Authority in many other cases has also held the view that the estate activity of a port must contribute substantially to reduce burden of tariffs on cargo and vessel related activities. Viewed in this perspective, the KCCI's suggestion of considering only the initial acquisition cost of land as the base does not appear to be reasonable. It is noteworthy that the guidelines in this regard issued by the Government also require the Port to fix lease rentals based on market value of lands. Likewise, the NMPC&FAA's suggestion of working out licence fee by deducting the licence fee so far realised by the Port from the actual acquisition and development cost of land may be relevant in the context of charitable organisations. A Port Trust is, however, a self-financing organisation, which has not only to meet all its expenditure from the revenue generated but also provide funds for its future developmental needs.
- (vi). The cost of land is the main contentious issue raised by the port users. The Port has considered a rate of Rs. 475/- per sq. mtr. based on the market value of land prevailing in the year 1996, which was assessed by the committee constituted for re-fixing the NMPT land rentals. The Port has clearly brought out the inappropriateness of comparing its land with those of the nearby industrial estates. It is a fact that market value of land is determined by various factors like lie of land, its accessibility, proximity to other development infrastructure facilities etc. We do not have any apparatus to verify the market value of lands at the NMPT. At the same time, there is no reason why the rate considered by the NMPT for re-fixation of lease rentals in 1996 cannot be taken as a base for this exercise also. It is noteworthy that the lease rentals of rentable land of NMPT other than the semi-paved stackyard in reference are based on the 1996 land value. That being so, it may be logical and convenient to consider the base value of land relating to the semi-paved stackyard to the 1996 level. It may be true that real estate rates fluctuate frequently. At the same time, it is also to

be recognised that it may not be possible to adjust the lease rentals with reference to every such fluctuation. There has to be a stability of tariff; and, therefore, an arrangement of quinquennial re-fixation of lease rental is prescribed. Since the last revision of lease rentals of NMPT lands took place in 1997, they are due for a review in 2002. Till such a review takes place, the base value of land as obtained in 1996 may continue for fixation of tariff for new facilities.

- (vii). The cost of development of semi-paved stackyard considered by the NMPT in the cost calculation works out to about Rs. 10 lakhs per acre. Even though the KCCI has given its assessment of such expenditure at about Rs. 5 lakhs per acre, it has conceded that the expenditure indicated by the NMPT can be considered to avoid any further arguments. It is to be recognised that development cost has already been incurred by the NMPT. This being a sunk cost, we may accept the position reported by the NMPT in this regard.
- (viii). The NMPT has considered a 12% overhead on capital cost and 23.75% on maintenance and service cost. As pointed out by the KCCI, when the entire development work has been carried out by outside contractors, there appears no justification to include an additional cost element towards departmental charges. Likewise, there is no justification to consider departmental charge over the maintenance and service cost elements since such cost elements themselves are estimates based on the capital cost and not actuals with reference to the expenditure incurred on these accounts.
- (ix). The NMPT has included the estimated property tax as a cost element. Taxation is not generally included as a cost element in computation of tariff. In this case, property tax needs to be excluded from the calculation to arrive at the licence fee and set apart for reimbursement with reference to 'actuals' besides the licence fee.
- (x). The Authority allows a maximum rate of return of 19.5% on capital employed in the case of all Major Port Trusts. Since the 3% contribution to each of the specified mandatory reserves is not relevant in the case of lands, the maximum permissible return in such cases can only be 13.5%. In its proposal, the NMPT has sought a return of only 10.5%. The NMPT may have opted for a reduced return in order to keep the licence fee at a lower level to provide some concession to its users. That being so, we may allow a return of 10.5% on the capital cost as proposed by the NMPT.
- (xi). Based on the discussion above, the calculation of licence fee for the semi-paved stackyard has been revised. The revised calculation sheet is attached as Annex-VIII. The revised calculation indicates a monthly licence fee of Rs. 730/- per 100 sq. mtrs, which may be approved. Besides the licence fee, pro-rata property tax as actuals will also to be re-imbursed by the licensee.

- (xii). The NMPT has also forwarded a set of conditionalities governing licensing of semi-paved stackyard. These conditionalities are more or less comparable to those available in the existing Scale of Rates for allotment of other rents of NMPT. The Authority has already modified some of the conditionalities relating to allotment of lands of the NMPT while passing its order in the NMPT general revision of tariff case. Similar modifications have been carried out in this case also.
- (xiii). The NMPT has proposed to collect only one month's licence fee as security deposit for licensing semi-paved stackyard. In the case of other lands, security deposit equivalent to three months' licence fee is collected. Since the licensing of semi-paved stackyard is on a short term, basically on a monthly licence basis, the proposal of the NMPT to levy only one month's licence fee as a security deposit appears to be reasonable and may be approved.
- (xiv). The NMPT has proposed to levy a penal interest of 24% for default in payment of licence fee. The Authority has recently reduced the penal interest rate from 24% per annum to 18% per annum. (This matter has been brought up again for reconsideration by the Authority under item 4(iii) of the agenda for this meeting). The prescription made by the Authority in this regard for common adoption by all Major Port Trusts will apply in this case also.
- (xv). One of the conditionalities proposed relates to resumption of the land licenced by the Port. In such an event, the NMPT has proposed that no compensation will be allowed to the Licencee. In a similar case relating to the Mumbai Port Trust, the Authority has decided that if resumption of possession of land is made by port for smooth operations, it has to bear the cost of shifting; and, if resumption is made due to unauthorised utilisation, the port need not bear the cost of shifting. Similar prescription may be made in the case of the NMPT also. For the purpose of clarity, it may also be mentioned that no compensation will be payable by the NMPT if the licence is cancelled for not complying with the conditions of licence or if it decides not to renew the licence.
- (xvi). The NMPT has already put the semi-paved stackyard into use and has licence fee in view of the difficulties in recovering the increased charges from their principals. Earlier, in some cases this Authority has allowed retrospective revision of rates with effect from the date of endorsement of the proposal by the Board of Trustees. In this case, as has been mentioned earlier, the Board of Trustees of the NMPT has not explicitly proposed fixation of licence fee with retrospective effect. This Authority has been approving tariffs with retrospective effect only in special circumstances. In this case, no such special circumstance has been indicated by the NMPT. That being so, there is no justification for fixing the licence fee with retrospective effect. Nevertheless, the provisional monthly licence fee of Rs.600/- per 100 sq. mtr. levied by the NMPT is approved retrospectively from February

2000 only for the purpose of regularising the transactions that had already taken place. The revised licence fee of Rs.730/- per 100 sq. mtr. per month is approved for prospective application.

7.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority decides as follows:-

- (i). Approval of a monthly licence fee of Rs.600/- per 100 sq. mtr. for the semi paved stackyard with retrospective effect from February 2000 till notification of this Order in the Gazette of India.
- (ii). Approval of a monthly licence fee of Rs.730/- per 100 sq. mtr. for the semi paved stackyard with effect from the date of notification of this Order in the Gazette of India.

7.2. The Scale of Rates governing licensing of semi paved stackyard is attached as Annex-II.

7.3. The NMPT is directed to include these provisions in its Scale of Rates appropriately.

( **S. Sathyam** )

Chairman

Annex – I

Calculation of Licence fee for the semi-paved stack yards in the port premises

	Amount (in Rs.)
Capital cost of building	7222321.06
Cost of land (Rs.475/- sq. meter for 28910 sq. meters)	13732250.00
Total Capital cost	20954571.06
Interest @ 10.5%	2200229.96
M.R. @ 0.95% of the total capital cost	199068.43
S.R. @ 0.63% of the total capital cost	132013.80
Total rent per annum	2531312.19
Rent per month	210942.68
Licence fee per sq. meter per month	7.30
Licence fee per 100 sq. meter per month	730

Annex- II

**New Managalore Port Trust**

Schedule of Rates and statement of conditions governing licensing of semi-paved (WBM surface) stackyard outside the security compound wall:

Particulars	Licence Fee (Rupees per 100 sq. meter per month)
Licence fee for semi- paved (WBM surface) stackyard outside the security compound wall on short term licence basis for a period up to 3 years.	730.00

Notes:

(1). Person requiring allotment of land for storage of their goods in semi-paved (WBM surface) stackyard outside the security compound wall of New Mangalore Port Trust (NMPT) on monthly licence basis may apply in writing for a licence in the form prescribed by the NMPT from time to time. But, it shall be at the discretion of the NMPT to allot or refuse such land.

(2). In applying for land for storage / stacking of goods, the applicants for land shall accept all risks and responsibility for goods so stored / stacked. The occupation of land shall be subject to the conditions set-forth in clause (3) below (which shall be reproduced in the Licence deed). Encroachment or unauthorised occupation of the NMPT land, stacking of goods on the NMPT land, and stacking goods on NMPT Railway track, plants, equipments, approach road, etc., causing obstruction to the movement of traffic by the licencees will involve a liability to pay a penalty at the rate not exceeding five times the applicable licence fee laid down in the Scale of Rates, in addition to the cost of rectifying damages caused to the NMPT properties. If the licensee fails to remove the goods from the encroached area inspite of notice to do so, the goods will be removed by the NMPT at the risk and cost of the licensee and penal rent at the rate not exceeding five time the normal rates will be levied on the land occupied by the licensee.

(3). **CONDITIONS:**

(i). Goods stored/stacked under the licence deed shall be at the entire risk and responsibility of the licencees. The NMPT will not in any way take responsibility for pilferage, theft, fire or loss thereof. The licencees shall post their own watch and ward to safeguard the goods stored/stacked at their allotted land to prevent any unauthorised occupation of such land by others.

(ii). The licencees shall not construct or put up any buildings, sheds, erection, convenience or canteens on the land occupied under the licence deed except with the written permission of the NMPT. The licensee shall remove such buildings, sheds, erection, convenience or canteen, if any, on the land and restore the land to its original condition at the time of termination of the licence and if the licencees fail, the

NMPT will arrange for removal of such erection at the cost, risk and responsibility of the licencees.

- (iii). In addition to payment of licence fee as per the Scale given above, property tax at actuals as applicable to the land licenced shall be reimbursed by the licensee.
- (iv). The licence fees alongwith reimbursement of applicable property tax at actuals shall be paid from the date of allotment/occupation of land in accordance with the rate laid down in the Scale of Rates which shall be remitted for each calender month in advance i.e. before 1<sup>st</sup> of every month. In case the payment is not received before 1<sup>st</sup> of every month, penal interest at the rate adopted in terms of the Tariff Authority for Major Ports' Order dated 5 November 2001 shall be paid on the accumulated arrears in addition to the licence fee. In any case, the licence fee should not accumulate for more than 15 days from the date when the advance licence fee becomes payable. In case the licence fee is not received by 15<sup>th</sup> of every month at the latest and land is in occupation of the licensee, double the normal licence fee will be levied from the due date till the licence fee is paid and the NMPT shall have the right to terminate the licence and to resume the land so allotted in which case the licencees shall not be entitled to claim any compensation on any account.
- (v). The licencees shall vacate the land occupied by them if the licence is not renewed by 15<sup>th</sup> of every month at the latest and in case the licensee fails to hand over the land in vacant possession on the date of expiry of the licence granted after removing such structures or constructions, if any, put up, the NMPT shall have the right to remove such structures and the goods stored in the land at the cost, risks and responsibility of the licencees and in addition, the NMPT shall charge a penalty at the rate not exceeding five times the normal licence fee leviable under the Scale of Rates for the period the goods may have remained within the NMPT Estate beyond the period for which the licence was granted.
- (vi). The licencees shall deposit with the NMPT an amount equivalent to one month licence fee on the land allotted to them under the licence as a guarantee for the due and faithful performance of the condition set-forth in the licence and the deposit will be refunded when the land is vacated finally after adjusting any amount that may be due to the NMPT.
- (vii). The licence fee will be increased at a uniform rate of 5% every year (compounded) rounding off to the nearest rupee with effect from the expiry of one year from the date of notification of this Scale of Rates in the Gazette of India. The NMPT shall have an option to refix the base every 5 years.

- (viii). The NMPT shall have the right at any time to resume the possession of the land wholly or partly which is required by the port / not occupied by the licencees, in which event the proportionate reduction in licence fee will be allowed. In case of resumption of possession by the port of land required by the port for smooth operations, the port will bear the cost of shifting; however, in case the area allotted is found to be utilised for any unauthorised purpose, the NMPT will resume the possession of the land and in such cases, the NMPT will not bear the cost of shifting. No compensation shall be payable by the NMPT if the licence is cancelled for not complying with the conditions of licence or in the event of refusal to renew the licence.
- (ix). The licencees shall agree to comply with all rules or directions issued by the NMPT from time to time. Should the licencees neglect to comply with the rules or directions, the NMPT may terminate the licence.
- (x). The licencees shall agree that all payments and expenses of whatever sort due to the NMPT in respect of land allotted to the licencee, shall be recoverable at the rates prescribed in the NMPT Scale of Rates.
- (xi). The licencees shall comply with all rules and regulations that may from time to time be issued by the local authorities or the Inspector of Explosives, the Department of Explosives, Government of India or Pollution & Environmental Control Authorities or whomsoever concerned in relation to the storage of goods under the licence.
- (xii). The licencees shall have the right to appeal against resumption of possession of the land to the Board of Trustees of the NMPT within a period of 30 days from the date of receipt of the order appealed against and the decision of the Board is final in this regard.
- (xiii). The licencees shall be liable to comply with the demand for rates, taxes, assessments, etc. that may be levied by the NMPT or local authorities as a result of the occupation of the land by the licencees.

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