

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

No. 227

NEW DELHI, the 24 August 2001

**Tariff Authority for Major Ports**

**NOTIFICATION**

**No.TAMP/120/2000-KPT**

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 Kandla Port Trust for revision of the rate structure for its lands leased out for the purpose of salt manufacture as in the Order appended hereto.

( **S. Sathyam** )

Chairman

**Case No.TAMP/120/2000-KPT**

**The Kandla Port Trust**

---

**Applicant**

**O R D E R**

**(Passed on this 9th day of August 2001)**

This case relates to a proposal received from the Kandla Port Trust (KPT) regarding revision of the rate structure for its lands leased out for the purpose of salt manufacture.

2. The KPT has made the following main points in its proposal:-
- (i). The Government of India (GOI) had in July 1994 fixed the lease rent for lands leased out for the purpose of salt manufacture at Kandla.
  - (ii). In March 1998, the GOI had issued the policy guidelines to the port on 'land/water front management at Major Ports' and directed the following:
    - (a). The base of lease rent shall be re-fixed every five years; and,
    - (b). lease rent shall bear an escalation at the rate of 5% (compoundable) per annum.
  - (iii). As per the Government Guidelines, the lease rent for the Salt Lands at Kandla became due for revision in July 1999. Accordingly a High-Level Committee under the Chairmanship of the Chairman (KPT) along

with other members was formed which included a representative from the District Administration also. The High-Level Committee was entrusted the task of re-fixing suitable base of the lease rent in respect of Salt Lands at Kandla.

(iv). The High-Level Committee considered the following approach for arriving at the new rates:

- (a). As per the GOI Guidelines, the rates are to be fixed by taking into account the cost of development of land, cost of providing various facilities/ services, fair rate of return on capital investment, market rate, etc. Since, the port had not spent anything on the above, this methodology has not been adopted.
- (b). The other reasonable approach to arrive at the market rate was to consider the rates of transfer of Salt Lands, but no such transaction has taken place in the recent years.
- (c). Finally, in the absence of any datum to start off, the Committee resorted to the option of revising the rates on the basis of fair rate of return on the capital investment over a period of five years. Since, the present market trend indicates a return of 100% on the long-term investment for the cumulative option, it was decided to revise the rates of Salt Lands on the same analogy

(v). The existing rates for the Salt Lands vis-à-vis the rates proposed by the KPT based on the recommendations of the High-Level Committee are as follows:

	<u>Description of Salt Lands</u>	<u>Lease Rent Rates</u>	
		<b>(Rs. per acre per annum)</b>	
		<u>Existing rate</u>	<u>Proposed rate</u>
(a).	Upto 10 acres	<b>200</b>	<b>400</b>
(b).	Above 10 acres but less than 100 acres	<b>100</b>	<b>200</b>
(c).	100 acres and above	<b>65</b>	<b>130</b>

(vi). The recommendations of the Committee were approved by the Board of Trustees of the KPT on 20 October 2000 subject to approval of the TAMP.

(vii). The KPT has requested for a retrospective revision of rates with effect from July 99.

3. The proposal of the KPT was circulated to the representative bodies of users for their comments. The comments received from them are summarised as below:-

**Kutch Small Scale Salt Manufacturer's Association (KSSMA)**

- (i). The methodology adopted by the Committee for revising the lease rent rates on a lump-sum basis on the notion that market trend necessarily shall bring a return of 100% on the investments does not appear to be sound. Instead of adopting a rational formula based on actual market rates or to consider the rates of transfer of lease hold rights of salt lands, the Committee has taken shelter under the expected return of 100% on investments, which is not a fair proposition. The recommendations of the Committee are arbitrary and unjustified as no comparison can be made with the investments.
- (ii). The KPT, as the lessor, is already charging an escalation on lease rent at the rate of 5% per annum (compoundable) every year. Hence, 100% increase in the lease rent for a term of five years with effect from July 1999 is not justified and is very much on the higher side. Moreover, the lessee is required to pay a premium equivalent to minimum one years' lease rent to the port in addition to a payment of deposit equivalent to one years lease rent as refundable security.
- (iii). In another case relating to revision of lease rent in respect of land leased to Central Warehousing Corporation (CWC) at Kandla, the Gandhidham Chamber of Commerce and Industry had pointed out that the increase made by the KPT was much higher and does not comply with the relevant clause in the lease agreement which is binding on the lessor and lessee. In this particular case this Authority passed an Order in January 2000 stating that the rates fixed by the KPT are not valid.
- (iv). The existing rates of lease rent for the KPT salt lands are the highest compared to lease rent rates of salt lands in Gujarat, Rajasthan, Maharashtra, Karnataka, Goa, Tamil Nadu and West Bengal. Any further enhancement, therefore, will be detrimental to the interests of the entire salt industry, which is reeling under unprecedented recession and financial crisis. The lease rent rates prescribed in the neighbouring States have not been considered before revising/ re-fixing the rates for Kandla Salt Lands.
- (v). The KPT did not give an opportunity to its lessees to express their view points before embarking upon raising the lease rent.

#### **The Gandhidham Chamber of Commerce & Industry (GCCI)**

It has reiterated the views of Kutch Small Scale Salt Manufacturers' Association.

4.1. A joint hearing in this case was held on 12 April 2001 at the KPT. At the joint hearing, the following submissions were made:

#### **The Kandla Port Trust (KPT)**

- (i). The Government Guidelines prescribe a 5-year cycle of revision. Last revision of lease rent of the KPT Salt Lands was in 1994. Hence, revision was already due in July 1999.
- (ii). Annual escalation clause of 5% per annum (compoundable) is also according to the Government guidelines.
- (iii). In absence of any sale transactions, we have gone by return on capital employed @ 18% (12% towards Interest on Government loan + 6% towards Development and Renewal Funds).

### **The Gandhidham Chamber of Commerce and Industry (GCCCI)**

- (i). If data are not available with the KPT, the data available with other State Governments for their Salt Lands can be taken as the base for revising the lease rent.
- (ii). People occupying the salt lands must have been consulted by the Port before proposing any revision.
- (iii). State Government charges lease rent of Rs.12/- per acre; but, they also provide facilities.
- (iv). Compoundable annual escalation clause @ 5% per annum will take care of the long term 'return' requirements.
- (v). In the last three years there have been cyclones, an earthquake, and drought in Gujarat. The State Government has agreed to remit for losses. The KPT must also be equally sympathetic and postpone this revision. Do not increase the rates; or, at least, suspend the revision for five years.
- (vi). Compare the lease rent rates with other states and other ports; and, maintain reasonable parity.
- (vii). The KPT is an affluent port. There is no difficulty for them to be financially self-reliant.
- (viii). The Committee should have consulted the KSSSMA members before revision of the rates.
- (ix). In the Central Warehousing Corporation case, TAMP itself has turned down the KPT proposal. The same considerations may be applied in this case also.

### **Kutch Small Scale Salt Manufacturers' Association (KSSSMA)**

- (i). We are small holders. We have been there for long.

- (ii). The KPT has spent nothing. Actually, we have prepared moorum roads on which their jeeps run. Where is the KPT investment?
- (iii). State Government has given substantial relief to 700 salt units on their lands. We are 26 units on the KPT lands. How can we face competition from them?
- (iv). There was cyclone, earthquake and drought in Gujarat during the last three years. Therefore, suspend this revision for 2 years.

4.2. At the joint hearing, the GCCI has submitted its further written submissions, the main points of which are summarised as follows:

- (i). Since 1998, the Kutch district has continuously suffered from a series of disastrous calamities badly effecting the industrial movement particularly the salt industry. The earthquake of January 2001 is the biggest jolt to the salt industry.
- (ii). The reconstruction and rehabilitation of this industry will call for huge investment with no guarantee that there will be no calamity in the near future.
- (iii). Under these circumstances, the Gujarat Government which owns 95% of the land under salt industry has waived the lease rent and royalty on production of salt. The KPT owns only 5% of the land under salt industry. It is expected that the KPT must also give similar financial assistance to the salt industry.
- (iv). Since the salt industry is passing through a great crisis, any revision in the rate structure of land is unjustified and unwarranted. The KPT shall drop this proposal once for all.

5. With reference to the totality of information collected in this case, and taking into account the arguments advanced at the joint hearing, the following position emerges:

- (i). The lease rents for the KPT salt lands were last revised in 1994. Going by the 5-year cycle of revision prescribed in the Government Guidelines on the subject, the next revision was due in 1999. It is for this reason that the KPT has requested for retrospective revision with effect from July 1999.

It is, however, to be recognised in this context that Salt Lands have been given on lease on separate specific Lease Agreements. As has been decided by this Authority in another case of the KPT itself about lease of lands to the Central Warehousing Corporation, and as rightly stressed by the GCCI and the KSSSMA, the provisions of a specific Lease Agreement shall be held to prevail over subsequent general instructions/ guidelines. In this case, the Government Guidelines were issued in March 1998 requiring introduction of new clauses even in old

Lease Agreements. Unless the old Lease Agreements provide for such (unilateral) alterations, this cannot be said to be valid in law.

- (ii). The lease rent is supposed to be computed with reference to land value which is supposed to be derived from sale transactions of comparable lands in the neighbourhood. No such data are reported to be available to enable computation in accordance with this formula. The High-Level Committee set up for this purpose, therefore, has recommended a 100% increase on the basis of an expected return of 100% on investments ( @ 18% per annum).
- (iii). The Government Guidelines prescribe a revision of the 'base rate' quinquennially. This has been taken by the KPT to mean a revision of the 'lease rent' itself. This understanding does not appear to be correct. The provision about change of the 'base rate' has to be seen in the context of the provision for annual escalations. Otherwise, the logic of fixing rentals on long-term leases will be lost.
- (iv). The KPT has sought to justify its proposal for a 100% increase on the strength of the 18% (actually, it is 19.5%) return per annum on investments. The KPT's approach of equating 'investments in lands' and 'investments in equipment/machinery/etc.' is not correct as the life spans of the two vary widely. Also, its attempt to include the 6% return covering the two mandatory contributions to 'Renewal' and 'Development' Funds is inappropriate. In the case of lands, there is (and, can be) no renewal; and, there has been no investment from the KPT for development of the Salt Lands.
- (v). In the case of long-term leases, the lease rentals (including its mid-term revisions) are specifically detailed in the Lease Agreements. The annual escalation clauses are meant to take care of interim enhancements. Ordinarily, these are computed as simple rates with a 5-year change of the 'base rate' for absorption of these escalations for purposes of future computations of annual escalations. If the Government Guidelines provide for a compoundable annual escalation, there may be no need for a revision of the 'base rate' as, otherwise, it will amount to a case of double escalation.
- (vi). The GCCI and the KSSSMA have argued for a correspondence of the lease rental revision in this case with salt lands elsewhere. This does not appear to be a reasonable proposition. Factors like availability of lands, lie of the lands, pressure on lands for requirements of port purposes, etc., are bound to have variable impact on land values.
- (vii). The GCCI and the KSSSMA have pleaded for 'financial assistance/relief' from the KPT to the salt industry on the same lines as the assistance/relief given by the Gujarat Government. This is not a matter for this Authority to concern itself with irrespective of the

sympathy it may have with the small-scale salt manufacturers of the area who have suffered repeated natural onslaughts in recent years.

- (viii). The GCCI and the KSSSMA have complained that the High-Level Committee did not have any consultations with them before recommending the revision of rates. While this may be factually correct, in view of the fact that this Authority has given them adequate opportunities to represent their views in the matter, this omission cannot be said to be materially significant at this stage.
- (ix). Bearing in mind the unfortunate fact that the Kutch area has been hit by two cyclones, one earthquake, and one drought in the last four years, this Authority has accepted the KPT's request for putting 'on hold' the matter relating to revision of land rentals In the Gandhidham Township area. It is not clear why the same sympathy shall not be shown to the small-scale salt manufacturers. The KPT has surprisingly excluded these salt lands from such sympathetic consideration without disclosing any reasons therefor. Recognising the lack of reasons for such distinction, this Authority is, however, inclined to subject this case also to the same considerations. It will be more appropriate and equitable for the KPT to take up the case of the salt lands for revision of rentals only when the other land cases are found to be ready for such reconsideration.

6. In the result, and for the reasons given above, and based on a collective application of mind, this Authority decides not to accept at this juncture the proposal of the KPT for revision of the rate structure for its lands leased out for the purpose of salt manufacture. The KPT is also required to take into account the other points about computation of escalations, etc., whenever it decides to revive this proposal along with all the other land matters.

**( S. Sathyam )**

Chairman