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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 rejects the proposal of the Tuticorin Port Trust (TPT) for revision of railway charges relating to the SPIC cargo and empty containers as in the Order appended hereto.

(**S. Sathyam**)

Chairman

Case No. TAMP/74/2000-TPT

The Tuticorin Port Trust ... Applicant

O R D E R

(Passed on this 12th day of June 2001)

This case relates to a proposal received from the Tuticorin Port Trust (TPT) for revision of Railway Siding Charges for M/s. Southern Petrochemical Industries Corporation Limited (SPIC) cargo loaded in the SPIC siding and passing through the Port Marshalling Yard and for empty containers.

2.1. The TPT has made the following main points in its proposal:

(i). The last revision of the railway siding charges was approved by the Ministry of Railways with effect from 30 June 1999.

(ii). During the last revision, the Ministry of Railways approved an adhoc rate of Rs.7/- PMT for the SPIC cargo passing through the Port Marshalling Yard as against the TPT proposal of Rs.15/- PMT for loading 3 lakhs tonnes of SPIC cargo per annum. Similarly, the rates approved for empty containers were Rs. 30/- and Rs. 50/- per 20' and 40'containers respectively as against the proposed rate of Rs. 44/- and Rs. 70/- respectively.

(iii). Since the siding charges approved in respect of the SPIC cargo and the empty container were much less than the proposed cost based rates, the TPT had requested the Ministry of Railways to reconsider the proposal.

(iv). In the meantime, the (then) MOST directed that TAMP is the only Authority to decide the matter on revision of Railway charges of major Port Trusts. Based on this direction,the TPT has requested the Authority to reconsider the rates earlier fixed by the Ministry of Railways for SPIC cargo and empty containers and approve the rates originally proposed by it.

2.2. In its proposal the TPT has proposed revision of charges as follows:

	Description		Existing rate approved by the Ministry of Railways (per MT)	Proposed rate (per MT)
(a).	For SPIC cargo		Adhoc charges of Rs.7/- per MT	
	(i)	For the first 3 lakh tonnes per annum		Rs.15.00
	(ii)	Above 3 lakh tonnes but upto 6 lakh tonnes per annum		Rs.12.00
	(iii)	Above 6 lakh tonnes per annum		Rs.10.00
(b).	For Container			
	(i)	Empty container above 20 ft.	Rs.30.00	Rs.44.00
	(ii)	Empty container above 20 ft.	Rs.50.00	Rs.70.00

2.3. This proposal was endorsed by the Board of Trustees of the TPT in its meeting held on 28 June 2000.

2.4. The TPT has submitted the following further points in favour of its proposal:

(i). After conversion of the Metre gauge (MG) lines to Broad Gauge (BG) lines, the Port had to pay a substantial amount to the Railways towards maintenance of private siding (from 11.3 Kms. to 17.8 Kms.) and for the assisted siding (from 0 Km to 11.3 Kms.). As a result, the railway activity has suffered a heavy deficit in 1998-1999; and, this trend continues.

(ii). The Railway Board, however, has approved rates which are much lower than the cost based rates proposed by the TPT. The loss in revenue from the Railway Activity was Rs.160.75 lakhs for the financial year 1998-99 and Rs.121.31 lakhs for the financial year 1999-2000.

(iii). (a). The Accountant General (Tamil Nadu and Pondicherry) has also raised an objection about the loss of revenue due to injudicious fixation of siding charges in respect of the SPIC cargo.

(b). The AG has observed that the SPIC must be treated as a private user and Rs.14/- PMT (subsequently revised to Rs. 15/- PMT) shall be levied on the SPIC cargo handled at the Port Marshalling yard. Even before the conversion of MG lines the SPIC was paying Rs.10/- PMT. In view of the above, the adhoc rate levied on the SPIC cargo should be reconsidered.

(c). The SPIC has relaid the siding in order to minimise road transportation cost and to avoid double handling of its cargo i.e. loading on to lorries and its unloading and reloading into the railway wagon.

3.1. The proposal was circulated to all concerned users / representative bodies of port users, Southern Railway and the PSA SICAL for their comments. The comments received from them are summarised below:

The Tuticorin Steamer Agents' Association (TSAA)

(i). The TPT has already increased the Railway Charges for containers varying from 50% to 100% with effect from 30 June 1999.

(ii). There is no justification for any further increase with in a short span of one year time. Any increase shall be only after three years from the date of previous increase of rates.

The PSA SICAL Terminals Limited

(i). The TPT has not presented any justification in its proposal for revision of rates for handling empty containers.

(ii). The present rates for handling 20' containers shall be maintained as these rates have come into effect only from July 1999.

(iii). It has no comments to offer on the charges for SPIC cargo, since it is outside its business operation.

The Customs Licensed Agent's Association (CLAA)

Since the rates have been revised very recently the proposed revision in the siding charges can be taken during the next revision of the Port Scale of Rates.

Tuticorin Port Handling Agents' Association (TPHAA)

It has endorsed the views of the TSAA.

All India Chamber of Commerce and Industries (AICCI)

(i). Recession in trade has made it very difficult for the trade community to absorb any additional cost. The trade will suffer badly in case of any further increase in the railway siding charges.

(ii). The Railway siding charges may be kept at the existing level so as to help the business community.

M/s. Southern Petrochemical Industries Corporation Limited (SPIC)

(i). The TPT had converted its railway siding lines from MG to BG in accordance with the conversion done by the Railways.

(ii). The SPIC, however, decided to dismantle its MG siding and started using the road transport for loading its products into railway wagons at the Railways Goods shed in Milavittan. This was found to be cheaper than loading through the MG siding.

(iii). The income of the Railways reduced drastically due to discontinuance in the usage of the MG System by the SPIC. In order to augment sizeable revenue, the Railways took all initiatives and suggested for an assisted siding by sharing the cost of construction. They also suggested that the Port should extend all possible help so as to get benefit of the revenue by this arrangement.

(iv). Based on these emphatic initiatives and assurances given by the Railways, the SPIC converted its sidings into BG Lines with facilities for direct reception and dispatch of full trainloads at the SPIC complex itself.

(v). The SPIC is not bound to pay any charges towards movement through Port marshalling yard or through any routing since the railway freight charges are collected from buffer end of the SPIC siding. It will be more appropriate for the port to approach the Railways instead of imposing siding charges on the SPIC.

(vi). The Port did not take the SPIC into confidence when they converted the MG lines into BG lines.

(vii). All other users of the Railway Sidings at Tuticorin yard are fully utilising the railway and other infrastructure provided by the Port without making any capital investment of their own. Whereas, SPIC has incurred heavy capital cost for laying the siding at its factory premises and also on the Port Trust land for which lease rent is being paid annually. Apart from these, the SPIC has also laid an additional line, for the SPIC traffic to pass through Port Trust siding line. This line is also being used by the Port and the port users,for which no levy is collected by the SPIC. Hence, comparing the SPIC with other private users of Port Railway siding is not correct.

(viii). The traffic moved by the SPIC is an incremental traffic to the Port Trust railway siding. If the SPIC had not converted the MG siding into BG, the additional earnings of Rs.63 lakhs per annum (at Rs.7/- per tonne for estimated traffic of 9 lakhs tonnes per annum) by way of port railway siding charges and Rs.24/- lakhs per annum by way of lease rent would not have accrued to the TPT. Hence, the contention of TPT that the rate of Rs.7/- per tonne has led to revenue loss is incorrect.

(ix). (a). Land rent is paid to the TPT annually towards the land leased for railway lines.

(b). There is an additional recurring expenditure towards maintenance of the additional siding line at Port Exchange Yard and BG Loco.

(c). Since the loading is done at the factory premises, the cost of railway staff is borne by the SPIC.

(d). The traffic booked is being charged freight reckoning the distance from the buffer end of the SPIC siding.

(x). Road transportation has become most economical consequent to the upward revision of 48% in railway freight for DAP and MOP with effect from 1 April 2000. The proposed increase will not be economical to the SPIC. They will have to review the pattern of distribution and look for another option of transportation mode mix giving a higher weightage to road transportation.

The Southern Railway

(i). The SPIC siding is a land locked siding and the empties / load are forced to move through the Tuticorin Port Exchange Yard.

(ii). The entire cost of conversion of the SPIC siding was borne by the Railways as one time measure as per the terms laid down by the Railway Board. Basically, it is at the instance of the Southern Railway for sharing the cost of conversion and the assurance given by the TPT for charging a nominal rate for SPIC traffic to utilise the Port Trust Railway's Marshalling Yard, the SPIC agreed for conversion of their siding into Broad Gauge.

(iii). To facilitate this movement the SPIC has constructed an additional (5th) line in the exchange yard entirely at its cost for its traffic to pass through the Port Trust siding line. The maintenance cost for this line is also borne by the SPIC.

(iv). Neither any Port Trust Locomotive is utilised for moving any consignment from/ to SPIC Siding nor is there any movement of any consignment of the SPIC from/to wharf end. In fact, the wagons from / to SPIC siding are moved with Railway Locomotives. The TPT is only collecting siding charges from the SPIC and other parties without incurring any additional financial burden on this account.

(v). The maintenance charges payable by the Port Trust to the Railways have also not been hiked by the Railways.

(vi). The proposed hike will only have a negative impact both on the earnings of the Ministry of Railways and on the earnings of the (then) Ministry of Surface Transport (TPT), if the SPIC resorts to road movement. In this connection, it will be pertinent to add that the SPIC has got a subsidiary company which owns a fleet of 500 trucks.

(vii). If the SPIC curtails rail dispatches, the Railways share of traffic, which was substantially improving from 40-50% to 60-62% over the years may decline drastically resulting into substantial revenue loss from a millionaire customer.

Tamil Nadu Electricity Board (TNEB)

Railway siding facilities at the TPT are not availed by them, and; therefore, they have no comments to offer.

3.2. The comments received from the TSAA, PSA SICAL, TCLAA, TPHAA, AICCI, SPIC and Southern Railway were sent to the TPT as feed back information.

4.1. The Madurai Division of the Southern Railway made a presentation on the prevailing siding charges levied by the TPT on 23 January 2001 before commencement of the joint hearing. The TPT officials were also present during the presentation.

4.2. The highlights of the presentation made by the Madurai Division of the Southern Railway are summarised below:

(i). The TAMP does not have jurisdiction over Port Railway operations. The Marshalling Yard at the TPT is outside the Port operational complex/Greengate area.

(ii). The SPIC was paying siding charges of Rs.10/- PMT even before the conversion of MG lines. Subsequent to the conversion of MG lines to BG, the Ministry of Railways approved an adhoc rate of Rs.5/- PMT in 1996 which was revised to Rs.7/- PMT in 1999.

(iii). The estimates of siding charges given by the TPT has been re-worked by the Southern Railway after making the following modifications:

(a). The expenditure pertaining to the Loco cannot be reckoned with as the SPIC does not use Port Loco.

(b). The TPT has considered the track maintenance charges for 16.72 Kms. of track length as against 1.1 Km of Port Private siding used by the SPIC traffic. In view of this, the operating expenditure, interest and ROCE has been modified and apportioned for 1.1 km. length.

(iv). Based on the above working and assuming that the SPIC traffic is of 8 lakhs tonnes per annum the siding charges for the SPIC cargo works out to a reasonable rate between Rs.2/- to Rs.3/- PMT as against Rs.7 PMT already being collected at present by the TPT.

(v). (a). Assuming the SPIC continues to load 8 lakhs tonnes per annum; the TPT shall earn Rs. 45 lakhs more by adopting the new proposed rates.

(b). If the SPIC traffic falls by 25%, the earnings of the Govt. of India would drop by Rs. 8 Crores.

(c). If the SPIC moves its entire traffic by road (no rail movement from the siding) then the Port earnings shall drop to zero and the Govt. of India's earning shall drop by Rs. 16 Crores.

(d). No increase shall, therefore, be allowed and status quo must be maintained.

(vi). (a). The freight charge for the SPIC is calculated by taking into account the entire distance from the buffer yard of the SPIC siding inside the factory upto the destination.

(b). Once Railways take over the cargo from the SPIC premises, it is Railways' responsibility and the SPIC has no say in the movement upto destination.

(c). The SPIC has, therefore, no liability to pay Port Trust any additional charges since its cargo is temporarily in the custody of the Railways.

(d). As per Railways agreement with the TPT [clause 19(a)], the Railway Administration shall have the rights to use the siding or any extensioin or part thereof for any purpose of the Railway Administration free of charge or without any renumeration to the Port Trust in respect of such use.

5.1. A joint hearing in this case was held on 23 January 2001 at the TPT. At the joint hearing, the following submissions were made :

The Tuticorin Port Trust (TPT)

(i). All users use the same facilities. Why discriminate between the users?

(ii). The TPT loses on railway operations. We are subsidising the railways. There is objection on this position.

(iii). The SPIC is a major user; and, therefore, we have proposed volume discounts.

(iv). The SPIC spends Rs.32 crores on railway freight. Additional earning of the port from the proposed siding charges is only Rs.40 lakhs. The SPIC will have no adverse impact from this proposal.

(v). In the case of empty containers, the Railways has reduced the rates arbitrarily. Reduction of the SPIC rate to Rs.7/- PMT is also arbitrary.

(vi). The calculation of the SPIC is erroneous. It uses our entire network.

(vii). The SPIC's claim about paying Railways is not wholly correct. Other users who use our Marshalling yard also pay the Railways and they pay us (Rs.17 plus Rs.15 PMT) whereas, the SPIC pays only Rs.7/- PMT.

(viii). For containers, the TPT has already given many concessions.

M/s. SPIC Limited

(i). The TPT has leased lands to us for which we pay lease rent. The TPT provides no services at all.

(ii). Railway freight includes payment for use of assisted siding, etc.

(iii). The TPT siding of about 1.5 km is used. We have also constructed 0.7 km siding; which means effectively we have to pay only for 0.7 kms. That will come to 90 paise per MT. Strictly speaking even this payment is to be made by the Railways.

(iv). We have been paying extra, Rs.5/- earlier and Rs.7/- now, which is highly objectionable. But, we will maintain our gentleman's agreement.

(v). Presently we move 65% by rail and 35% by road. If rates are raised, we will change the mix of cargo movement to 70% by road and 30% by rail.

Southern Railway

(i). All rates were approved by the Railway Board. We cannot say anything.

(ii). Railway freight is fixed by the Ministry of Railways. We cannot add anything. In other words, we cannot pay for the SPIC.

(iii). Empty container rates were reduced so as to attract more traffic. This is the assessment of the CONCOR.

The Tuticorin Steamer Agents' Association (TSAA)

(i). Repositioning of empties is a problem. The reduction given by the Railways is logical.

(ii). There is already a 50% increase allowed. More increase is not justified.

(iii). The SPIC has been persuaded to go in for BG conversion, so it deserves special consideration.

The PSA SICAL Limited

Container rates were increased only last year. Let the Railways decision be maintained.

The Custom Licensed Agents' Association (CLAA)

(i). The SPIC was reluctant to go in for gauge conversion. It was persuaded not to go to Milavittan by road. Therefore, it deserves special consideration.

(ii). As regards empties the reduced rates fixed by the Railways are logical / reasonable.

The Container Shipping Lines Association (CSLA)

It agreed to give written submission on the proposal within a week's time.

5.2. The SPIC has furnished revised working of siding charges of Re.0.90 PMT during the joint hearing.

6. The TPT has furnished its views on the comments of the SPIC, which are summarised as follows:

(i). The proposed rate is based on current operation and maintenance cost of the railway siding relevant for the kilometers of lines used by various categories viz. shipping operations, the SPIC cargo moving through Port's Marshalling Yard, containers and other private users.

(ii). The operation and maintenance cost of the track from Milavittan to the wharf end is met by the port for which the siding charges are collected. The SPIC may take up with the Railways for exemption of railway freight charges since they pay siding charges to the Port.

(iii). The Port has no necessity to discuss the matter relating to gauge conversion with a particular user of the Port siding. This infrastructure facility was created for the public in large and was not meant to cater to a single user.

(iv). The additional holding line laid down by the SPIC is not used for any port operation purposes.

(v). The financial year 1997-98 showed a huge deficit of Rs.172.11 lakhs in the railways siding at the existing tariff of Rs. 7/- PMT. This huge deficit is due to heavy investment made in BG conversion and also due to high maintenance cost of private siding and the assisted siding.

(vi). Lease rates have been approved by the Authority and are levied for the purpose of lease of Port land to the companies for laying tracks from the factory premises to Marshalling yard. It has therefore, no relation with fixation of siding charges.

(vii). Actual tonnage handled by the SPIC for the financial year 1997-98 to 2000-01 is less than the average tonnage of 9 MT per annum considered by the TPT in fixation of siding charges. This has resulted into under recovery of its actual cost. Any further dilution in the rates proposed will mean further reduction in recovery of this fixed cost.

(viii). Revision of railway freight for DAP and MOP by 48% is an universal phenomenon and not restricted to a short distance of traffic from the SPIC siding to Milavittan through Port Marshalling Yard.

7. As agreed to at the joint hearing, the CSLA has given a written submission which is summarised as follows:

(i). The proposed increase cannot be agreed upon since these rates were increased substantially in July 1999 from Rs.10/- to Rs.30/- for 20' container and from Rs.20/- to Rs. 50/- for 40' container.

(ii). Further increase by 50% per 20' container and 60% per 40' container is unjustifiable as the cost inputs for this charge do not warrant such escalation.

(iii). The proposed increase shall be disallowed till the Port undertakes proper investigation of its own internal cost and provides justification for these charges.

8. With reference to the totality of information collected during the processing of this case, the following position emerges for consideration:

(i). The existing rates for railway movement of SPIC cargo and empty containers have been fixed by the Railway Board in June 1999. The proposal of the TPT is for review of these rates since these rates were fixed without considering the costs incurred by the Port for providing railway facility. An audit objection raised by the Accountant General (TN&P) has also indirectly forced the Port to seek tariff adjustments based on its costs.

(ii). The Southern Railway (SR) deserves to be complimented for actively participating in this proceeding and providing various information, specifically relating to the SPIC siding, which helped us in a better appreciation of this position in its totality.

The SR has, however, raised a preliminary objection about the jurisdiction of this Authority in this case.

Earlier, this Authority did not consider the proposals submitted by some of the major ports for revision of port railway charges on the ground that railway related charges were not under its jurisdiction. The Ministry of Shipping, however, in consultation with the Ministry of Law has examined the legal issue relating to this Authority's jurisdiction over port railway charges and has advised that the TAMP is the only Authority to fix such rates. The stated policy of this Authority is that it will not seek any role to be assigned to it; the role assigned by law, however, will be played. In view of the advice from the Govt., on the legal position, this Authority has started entertaining proposals for revision of port railway charges from various major ports. If this Authority does not entertain such proposals, it exposes itself to a criticism about dereliction of duty. If the SR has any doubt over the jurisdictional issues, it will be appropriate for it to take up the matter with the Government; agitating this issue in the forum of this Authority will not serve any purpose.

(iii). The Port has furnished a cost statement for the Railway activity as a whole. This statement discloses a deficit of 153% and 134% for the years 2001-02 and 2002-03 respectively. The cost statement submitted by the Port needs modification for many reasons; but, it has not been done by us as these statements may not be directly relevant, for reasons given elsewhere in this analysis, to the issues in reference.

(iv). From the records made available by the Port, it appears that the Audit has suggested to apply the rate of private users to the SPIC siding. The TPT proposal, although it does not state this explicitly, is also to equate the siding rates for private use and the rate for SPIC cargo.

As has been brought out by the SPIC and the Southern Railway, the SPIC cargo is not a port bound cargo. Because of the design of the rail route, it has to pass through the TPT railway which is nothing but a transit facility. The SPIC has also invested its capital for the required loop line in the TPT marshalling yard and pays lease rent for the land occupied by its line. Nevertheless, there is no denying that the SPIC cargo utilises the TPT tracks for a part of its journey to Milavittan.

On the face of it, the objection raised by the Audit appears to be reasonable. But, the Port has allowed a concession in 1995 to the SPIC cargo to recapture its utilisation of Port railway network. It is noteworthy that, before this happened, the SPIC cargo stopped passing through the Port's marshalling yard and instead restored to direct loading at Milavittan. The Port has perhaps considered this as an additional revenue and allowed this concession. In the 1999, revision effected by the Railway Board, the rate for private siding was enhanced from Rs. 14 PMT to Rs. 15 PMT i.e. an increase of Rs. 1.0 PMT whereas in the case of SPIC cargo the rate was revised from Rs. 5.0 PMT to Rs. 7.0 PMT i.e. an increase of Rs. 2.0 PMT.

It is to be recognised that the SPIC is the major user of the TPT railway facility. Its cargo accounts for nearly 65% of the rail-borne cargo passing through the TPT railway network. The revenue from this (including lease rentals) is about Rs. 1.0 crore per annum to the Port. The SPIC has categorically mentioned that it will change its transporation mode, as any such increase in rate will make using the sidings unviable. Incidentally, this has happened in the past and the concessional rate was allowed only to recapture the traffic. Since nothing has changed between 1995 and now, it appears reasonable to continue with the existing arrangement of differentiating the SPIC cargo and other private use, considering the volume offered by the SPIC.

(v). The Port's cost statements are based on revenue and expenditure on the entire railway facility. The TPT has not given any separate cost statement for the facilities used by the SPIC to justify the proposed rates. The SPIC uses only a part of the port's railway network. As has been pointed out by the Southern Railway, loading the entire cost of Port Railways for determining the rate for the SPIC cargo is definitely not justified. For example, the operation and maintenance cost of locomotives of the Port is totally irrelevant in the context of the SPIC. Following the principle of *quid pro quo*, the TPT cannot propose to levy charges for services / facilities not provided by it. The Port has to consider direct expenditure and apportionment of indirect expenses to arrive at the rate for the SPIC cargo. It appears that apportionment of relevant expenditure on track maintenance, etc., can be reasonably made considering the 'tonne kilometer'moved by the concerned user.

(vi). The SPIC has a genuine grievance of paying twice – once to the Railways through freight charges and again to the TPT for siding charges – for the goods passing through the Port's network. The Railways have also accepted that they take over the goods at the SPIC siding and the movement thereafter is their responsibility. The TPT argument that the SPIC must seek reduction in freight charges from Railways cannot, therefore, be dismissed lightly.

The Port Trusts are self-financing bodies expected to generate adequate revenue to cover their operations cost as well as their development / modernisation expenditure. When a Port's property / facility is used, the Port is justified in demanding the user to pay for it. In this case, the question is who is to pay for the charges for using the marshalling yard and the port's railway tracks. The Southern Railway has referred to a contract agreement between the TPT and the Railways to argue that the Railway can use the TPT siding free of cost. In the changing circumstances, no service can come free of cost to anybody. It may be reasonable for the TPT to take up the matter with the Railways for apropriate changes in the agreement. It is not clear whether the position in respect of assisted siding referred by the Southern Railway will also apply to the marshalling yard. The Port may examine this issue also before it takes up the entire matter with the Railways.

Eventhough it raised the issue of paying twice for the same facility, the SPIC has, however, agreed to pay the TPT at the eixsting rate.

(vii). Since the cost position for the entire railway activity of the port is irrelevant in the SPIC cargo case, and in the absence of any specific costing in support of the proposed rate, the proposal of the TPT for revision of the rate for SPIC cargo is rejected. The last general revision of the TPT Scale of Rates (excluding Railway charges) was ordered by this Authority in December 1999 with the usual validity of revised tariffs for a period of two years. Accordingly, the next revision / review of Scale of Rates will fall due in December 2001. While framing its proposal for such a review / revision, the Port is advised to include railway charges also. It is needless to mention that the charges in reference shall be considered for revision then subject to the port proposing a rate supported by cost analysis and after weighing relevant commercial considerations.

(viii). As regards the rates for movement of empty containers, the Southern Railway has clarified that the existing rates were fixed on commercial considerations. It is to be recognised that Port tariff cannot be fixed based on the commercial considerations of the Railways. The Railways can attract traffic by allowing a reduction in freight charges. Nevertheless, it appears appropriate to consider the total position of railway activity comprehensively instead of tinkering with the rate for one item. Since the general revision is only 6 months away from now, it will be useful to wait for a comprehensive review. Till such time, the existing rates for empty containers are, therefore, allowed to continue.

9. In the result, and for the reaons given above, and based on a collective application of mind, this Authority rejects the proposal of the TPT for revision of railway charges relating to SPIC cargo and empty containers; and, orders that the existing rates shall continues till the next general revision of the TPT Scale of Rates which is due in December 2001.

(**S. Sathyam**)

Chairman
