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New Delhi, the 19 July , 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 disposes of a representation submitted by M/s. Sarat Chatterjee & Co. (VSP) Pvt. Limited for a special consolidated charge for dry bulk cargo handling using a floating crane and a conveyor belt system jointly at the Visakhapatnam Port Trust as in the Order appended hereto.

(S. Sathyam)

Chairman

Case No. TAMP/82/99-VPT

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

Vs

The Visakhapatnam Port Trust (VPT) ... Respondent

ORDER

(Passed on this 28th day of June 2001)

M/s. Sarat Chatterjee & Co. Pvt. Limited (SCCL) have reportedly developed and stationed a Mobile Cargo Handling System (MCHS) for the benefit of large vessels discharging dry bulk cargoes at the ore berth of the Visakhapatnam Port Trust (VPT) outer harbour. The SCCL has claimed that this system, in conjunction with a floating crane being built by it, will enable discharge of bulk cargoes from large vessels efficiently and economically.

2.1. The SCCL has sent a representation to introduce a consolidated charge at the VPT for the vessels utilising the MCHS developed by it. It has requested to extend the benefit of the consolidated charge for transshipment vessels (fixed by this Authority vide its order dated 22 August 1997) to the vessels utilising the MCHS for discharging cargo.

2.2. The SCCL has made the following points in its representation:

(i). The MCHS is the first of its kind in India and the system can be used with or without the floating crane with the ship's gear. The system need not utilise overside operations for discharge of cargoes, but can utilise the Ore Berths of the VPT (used for loading of Iron ore and transshipment of vessels) for loading as well as unloading through its system.

(ii). A discharge rate of over 10,000 tonnes per day can be achieved with this system for discharge onto conveyors and with a combination of overside discharge onto daughter vessel /

barges, the discharge rate can be increased to over 25,000 tonnes per day. Hence optimum utilisation of the system will ensure efficient and congestion free handling of the increased projected traffic at the VPT.

(iii). The VPT will earn substantial revenues due to increase in the volume of cargo without any additional capital expenditure. The country will also save a lot of foreign exchange.

(iv). A substantial amount of investment has been made by it without any guaranteed traffic. Also, it will have to incur over Rs.30 lakhs on the vessel related charges alone if the benefit of the consolidated charge is not extended to it. This will make its system financially unviable.

(v). No infrastructure is to be provided by the VPT to facilitate direct discharge of cargo using its system.

3.1. A copy of the proposal of the SCCL was sent to various port users/representative bodies of port users and the VPT. Comments received from them are summarised below:-

The Tata Iron and Steel Company Limited (TISCO)

Since they do not operate at the VPT for coking coal and limestone, they expressed their lack of interest in the proposal submitted by the SCCL.

The Shipping Corporation of India (SCI)

(i). The benefit of extension of the consolidated charge (of the lightening operations at the VPT, operated by the ETA (Dubai), can be granted to the cargo handling system developed by the SCCL.

(ii). The TAMP had already clarified during the joint hearing held on 2 July 1999 that the arrangement shall be available for application to any case of transshipment.

The Steel Authority of India Limited (SAIL)

(i). The system envisaged by the SCCL will facilitate berthing of cape-size vessels at the ore berth.

(ii). The system in operation shown by the SCCL has performed satisfactorily and the system, once made fully functional, can serve the intended purpose.

(iii). As the ore berth is not a traditional berth for discharge of bulk cargo in a regular manner; the innovative system to be put into operation at the ore berth by the SCCL will meet the requirements of the SAIL, subject to its commercial viability.

(iv). The request of the SCCL may be favourably considered.

M/s. ESSAR Steel Limited (ESSAR)

(i). The SCCL's innovative system has the following advantages:

(a). Use of daughter vessels and barges and hence the utilisation of berths for daughter vessels / barges for unloading onto shore can be avoided.

(b). Usage of ports' tugs and pilots for bringing the daughter vessels / barges to the berths can be avoided.

(c). The congested berths in the VPT can be avoided.

(ii). Any innovative method that will augment the port's cargo handling capacity shall be eligible for consolidated charges for transshipment.

(iii). Handling rate of 10,000 tonnes / day cannot be achieved by conventional methods.

The Indian National Shipowners' Association (INSA)

They do not have any objection if the benefit extended vide the TAMP order dated 22 August 1997 is extended to other Shipowners using similar methodology.

The Vizagapatam Chamber of Commerce and Industry (VCCI)

The VCCI has forwarded a copy of the grievances raised by one of the members of its Managing Committee viz. A.V. Bhanojirow Garuda Pattabhiramayya & Company. (The VCCI has subsequently clarified at the joint hearing that the comments given are not one company's views; they are the Chamber's views.)

The issues raised therein are summarised below:

(i). Since no additional cargo is guaranteed, there is no justification for reduction in the port charges.

(ii). The port has built an Iron Ore berth at a considerable cost which must be recovered by them in the normal course.

(iii). No penalty has been proposed, if the guaranteed discharge rate of 10000 to 25000 tonnes per day is not achieved.

(iv). The VPT is investing heavily in erecting grab unloading facility at G.C. berth (GCB) for higher throughput of coal which is handled at the GCB/ ETA (Dubai)'s floating crane only. The cargo handling system of the SCCL will, in addition to coal, handle fertilizer, which is a seasonal cargo and arrives at the VPT for 6 months in a year. That being so, the gainful utilisation of the existing berth is not apparent in view of any additional quantities not being proposed.

(v). The VPT is also building a new berth in the Outer Harbour as well as investing heavily on higher duty cranes in the Inner Harbour which will adequately meet the growing demands of the Port.

(vi). The benefits of the system to the Port and the users need to be clearly quantified before considering the proposal.

TRANSCHART

TRANSCHART has forwarded the comments offered by the Visakhapatnam Steel Plant (VSP), Rashtriya Ispat Nigam Limited. In its comments, the VSP has made the following points:

- (i). The proposal does not indicate the benefit to the VSP as a charterer if such system is installed in the port and also the amount of port charges that shall be leviable with such system in operation.
- (ii). The proposed discharge rate of over 10,000 MT per day and over 25,000 MT per day with a combination of over-side discharge, does not give the details as to stacking of the cargo in the Outer Harbour and / or evacuation of the same by rail or road. The present rail system available does not permit evacuation at the rates indicated above on daily basis.
- (iii). The scheme does not indicate the lay out of the system from the ore berth upto the discharge point with reference to the existing structures / equipment / facilities duly approved by port authorities.
- (iv). Instances of similar usage of such system for discharge of bulk cargo around the world is not mentioned.
- (v). The system does not indicate the 'escape route' when a single conveyor or number of conveyors in the route either in series or in tandem fails.
- (vi). There is no indication as to who will operate the system. It is presumed that either the port or an agency appointed by the port will operate the system and deliver the cargo at the designated places. Storage space/evacuation facility matching with the discharge shall be provided by the port authorities.
- (vii). The scheme does not indicate the measures to control dust pollution on account of transfer of cargo from one conveyor to the other.
- (viii). Demurrages / dispatches, if any, will be to the proposers' account who will operate the system and hand over the cargo to the charterers at the designated point on shore.

The ETA (Dubai)

- (i). The system is innovative and, in a way, a simple solution in providing scope for handling of bulk cargoes (in-bound) at the ore berth as this berth does not have a wider wharf-space. This system, however, necessarily requires a wharf to lay the conveyor system and also a wider dispatch space adjacent to the wharf for clearing of the material from the system.
- (ii). The system can certainly augment the productivity of the wharf area, which otherwise could not be used for import of certain cargoes.
- (iii). The system can assist in effective moving of the cargo from the ore berth to another wider berth / space for handling and clearance.
- (iv). The system proposed is not a Transshipment Operation (ship to ship/barge) but a direct discharge system from a ship to the wharf. Though the system envisages the use of floating crane for handling large gear-less ships, the handling of cargo shall be essentially and always between the ship and the wharf.

(v). This system must be considered on its own merits. To encourage private participation in the infrastructure development of the port sector in future, it must be accorded some concessions.

Visakhapatnam Port Trust (VPT)

(i). The port users deploy various mechanical handling equipment on shore for loading and unloading of cargoes and remove them immediately, after the completion of their operations.

(ii). Permanent conveyer system has already been provided at Ore Berths 1 and 2 for export of iron ore mechanically. Installation of the proposed system should not cause hindrance to the export of Iron Ore operations.

(iii). The VPT has no objection for installation of the proposed system as long as it is not an obstruction for loading of the Iron Ore mechanically; and, shore based MCHS has to be removed immediately within 8 hours' notice from the ore berth. All the vessel related charges, such as port dues, pilotage and berth charges are required to be paid by all the vessels discharging the cargo through the shore based MCHS as per the notified charges. Since it may not come within the purview of transshipment operations as per TAMP order dated 22 August 1997, the question of applicability of transshipment charges does not arise.

4.1. In response to the observations of A.V. Bhanojirow, Garuda Pattabhiramayya & Co. (AVBGPR), the SCCL has made the following points:

(i). Its system will enable gainful utilization of the Ore berth, which is generally a non-workable berth for cargoes other than Iron Ore.

(ii). It has not guaranteed any additional cargo to the VPT as it has not asked any guarantee from the VPT about berth availability.

(iii). Considerable investment made by the VPT in the Iron Ore berths can be recovered only by full utilization of them. The SCCL proposal is to fully utilise the Ore berths.

(iv). The SCCL agrees to give performance guarantee and accepts penalty for under performance.

(v). Increased volume of traffic will take care of the investments made by the VPT in the heavy duty cranes.

4.2. With reference to the comments made by the SAIL, the VSP and the VPT, the SCCL has responded with the following arguments:

(i). The issues raised by the VSP are technical in nature. The SCCL will give a demonstration of its system to the VSP separately to sort out all technical queries.

(ii). The VPT's argument that the SCCL operation will not fall under the transshipment operations as envisaged by the TAMP is not correct. The TAMP's Order dated 22 August 1997 needs to be read in conjunction with its Order (letter) dated 19 July 1999 which states

that 'Overside operations' will qualify for this special arrangement as transshipment operations, only when such operations are done at a non-workable berth for dry bulk cargo.

(iii). The MCHS of the SCCL can simultaneously discharge cargo on to the conveyor system as well as into daughter vessel / lighters. The daughter vessels may also carry cargo to other ports.

(iv). The ETA (Dubai) is also using the Ore berths for its operations.

5.1. A joint hearing in this case was held on 28 January 2000 in Visakhapatnam. At the joint hearing, the following submissions were made:

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

(i). The system is a combination of floating crane and conveyer. It is mainly for imports; but, it can also be used for exports.

(ii). There shall be no obstruction to the VPT operations at all. The system shall utilise the ore berths gainfully. The system can easily be dismantled well within 8 hours (we can demonstrate it).

(iii). Cape size vessels can also start coming in.

(iv). Even if the conveyer system is not transshipment; give us the same composite rate because we are using a non-workable berth gainfully.

(v). With the present shore system, 8,000 MT per day can be evacuated and if over-side discharge operations are also there, then, 15,000 to 17,000 MT more can also be easily evacuated.

(vi). We are ready to accept a penalty clause with respect to levels of 8,000 MT on conveyer and 12,000 MT on transshipment.

(vii). As regards the 'escape route', an arrangement to keep the spare conveyor belts is made which can be replaced in one or two hours (we can demonstrate it).

(viii). There will be no spillage because the joints are all covered; later on, if necessary, the whole system can be covered.

(ix). We do not want cross-subsidisation. We do not even want to divert the inner harbour cargo. The VPT can refuse to allow our big vessels if inner harbour berths are vacant.

(x). We want a composite charge only for vessel-related charges. We do not want any concession on cargo-related charges for cargo going into VPT.

The Visakhapatnam Port Trust

(i). The innovative systems are welcome. But, exploitation of such operations is causing us loss. This must be avoided.

(ii). If transshipment concessions are given to the conveyer operations, all the inner harbour traffic will shift to outer harbour. The tariffs will go down by 10 times and the operator will gain that much more. We cannot, therefore, agree to what the applicant wants.

(iii). When larger vessels come, users are benefited. They must be willing to share that. They cannot expect the VPT to bear all such losses.

(iv). If inner harbour traffic shifts to outer harbour, our loss will be to the extent of 90% in the tariffs which we cannot absorb.

(v). The Port Trusts are expected to have an IRR of 12% on their projects. The Government talks of an IRR of 16% on private projects. The SCCL cannot make more than that. The TAMP may go into their investments and scrutinise.

(vi). We cannot go into a situation of private monopoly. The applicant cannot be allowed to charge whatever he pleases and also takes concessions.

Indian National Shipowners' Association (INSA)

(i). The SCCL has made the general observations and stated nothing specifically. Let them give projections.

(ii). (a). The VPT itself is developing facilities at the Outer Harbour General Cargo Berth with Gantry cranes. The points whether adequate traffic to support the new system will be available and sufficient water space for such operations exists or not need to be considered.

(b). The implications of development of Gangavaram Port have to be taken into account.

(iii). For 8,000 MT per day, conveyer system does not qualify for any special consideration. With its new projects, the VPT itself can look forward to 12,000 MT per day.

(iv). The concession cited must add to the revenue of the VPT. There shall not be any unintended cross-subsidisation. The TAMP must ensure that this does not happen.

Steel Authority of India Limited (SAIL)

(i). Not long ago, there was a long waiting time at the VPT. It may happen again. We must provide for the outer harbour operations.

(ii). The new system will help us to charter cape size vessels. This will reduce costs all around.

(iii). The situation of lack of cargo at the second port of discharge will not happen.

(iv). The VPT must protect its interests. But, at the same time the VPT must also become competitive. We cannot shut our eyes to this.

(v). Ore berths 1 and 2 are not conventional berths. In normal system they cannot do even more than 1000 MT per day. Therefore, the ore berths cannot be compared with inner harbour.

Vizagapatam Chamber of Commerce and Industry (VCCI)

(i). The comments given by us were not one company's views; they were the Chambers' views.

(ii). Instead of giving benefits to one company, allow the market to decide. Do not give concessions to cargo discharged on berths.

ESSAR

(i). We support the proposal.

(ii). In 2 to 3 years our exports will increase to 7 MT.

(iii). We want to take advantage of the system for the next 2-2½ years after which our imports will cease and we will focus on exports.

(iv). If we load the cape-size vessels conventionally through lighters, it will become expensive. We have to take advantage of such innovative systems.

The ETA (Dubai) Limited

(i). Innovative systems must be encouraged.

(ii). This system of the SCCL cannot be recognised as a transshipment operation.

5.2. It was agreed in the joint hearing that the Chairman of the VPT would hold consultations with the SCCL and the concerned users to explore the possibility of evolving an agreed position on the following issues:

(i). Cases of transshipment operations will be governed by the same rates as for the ETA's floating crane.

(ii). Will the shore-based operations (i.e., the conveyer belt system) qualify for any concession; and, if so, what?

(iii). If there is a combination of the two sets of operations, then, what will be the tariff approach.

(iv). Will tariffs like Port Dues, Pilotage, and Berth hire apply at the usual rates in cases of shore-based operations (i.e., the conveyor belt system).

(v). Is it possible for the VPT to assure, to whatever extent, availability of the Ore Berths subject to assured minimum levels of traffic.

(vi). In case of emergence of assured minimum level of traffic, will the concept of 'volume discounts' be made applicable to this case also.

(vii). What safeguards can be introduced to ensure that traffic does not shift from the inner harbour to the outer harbour just to take advantage of a 'concessional package' thereby depriving the VPT of the revenue earnings at regular berths.

6. After the joint hearing, the SCCL submitted its comments on various issues raised by the users. In addition to reiterating their earlier comments on use of the idle capacity of the ore berth and generation of additional traffic/revenue to the port by the use of such facility, they stated as follows:

(i). For cargoes consigned for the Visakhapatnam Port, an amount of Rs.27.50 PMT will accrue to the VPT in case the consolidated charge benefit is passed on to them as against the VPT's view of only Rs.5.90 PMT.

(ii). The SCCL has only requested that a consolidated vessel related charge, as applicable to transshipment vessel and normal notified landing / wharfage charge on the cargo be charged. It has further requested to fix an even lower consolidated charge on vessels utilising its system, as the pilotage and tug movements of the VPT will be less than that for transshipment vessels.

(iii). It has proposed to handle 3 million tonnes of cargo per annum consisting of about 1million tonnes of coal already being consigned to the VPT, 0.5 million tonnes of coal to be transhipped to other ports (additional cargo to Visakhapatnam Port) 0.75 million tonnes per annum of fertiliser and fertiliser raw materials (out of this about 0.25 million tonnes of cargo is generally consigned to the VPT in the normal course and about 0.5 million tonnes will be the additional cargo that will arrive in view of the benefits to importers for bringing their cargoes in the large panamax vessel) and new cargoes to the tune of 0.75 million tonnes of imported iron ore (proposed to be imported by Hy Grade Pellets Limited for their iron ore fines pelletisation plant at Vizag in cape size vessels) or steam coal for the cement plants / thermal power plants. The SCCL's system will divert only 1.25 million tonnes of the VPT's existing traffic to its system and this will make the normal berths where these cargoes are presently handled, free for handling the other cargo to the tune of 0.625 million tonnes.

(iv). A comparative analysis of the financial benefits accruing to the VPT presently and that will accrue to the VPT, if the SCCL is charged a consolidated vessel related charges as applicable to transshipment operations is given below:

(a). The present earning to the VPT (by way of handling 1 million tonnes of coking coal @ Rs.50/- pmt and 0.25 million tonnes of fertilizer @ Rs.59/- pmt) areRs.6,47,50,000/-.

(b). The proposed earnings to the VPT in case consolidated charge benefit is passed on to vessels and cargoes utilising their system for the projected traffic (of 10,000,000 tonnes of Coking Coal for Vizag @ Rs.27.50 pmt, 5,00,000 tonnes of Coking Coal for other ports @ Rs.7.50 pmt, 7,50,000 tonnes of Fertiliser @ Rs.27.50 pmt, 7,50,000 tonnes of Iron ore/Steam Coal others @ Rs.27.50 pmt, 6,25,000 tonnes of Other cargoes assumed to be handled by Vizag Port in view of free berth capacity @ Rs.59.00 pmt) shall be Rs.10,93,75,000/-

(v). It is assumed that 50% each of vessels utilising the system will be Panamax type and cape size carrying about 70,000 and 1,30,000 MT of cargo respectively. Hence, average vessel size will be 1,00,000 MT. Accordingly, vessels related charge will be Rs.3.50 PMT as the vessel related consolidated charge presently is Rs.3,50,000/- per vessel. Also it is assumed that normal notified cargo landing / wharfage charge will be paid on cargoes finally consigned to the Visakhapatnam Port @ Rs.24/- PMT and a concessional wharfage of Rs.4/- PMT on cargoes being carried to other ports. Thus, the gain that will accrue to the VPT by passing on the consolidated charges will be to the tune of Rs.4,46,25,000. This income accrues to the Port without any additional investment. Even taking the most pessimistic view that no additional cargo will accrue to the VPT due to diversion of 1.25 MT to SCCL system, the net gain to the VPT will be Rs.77,50,000/-.

7. As decided at the joint hearing, the VPT submitted its comments, in consultation with various user organisations and the SCCL, on various issues raised, a summary of which is given below:

(i). Two meetings with the SCCL, Stevedores Association, INSA, Steamship Agents' Association, SAIL, ESSAR and C&F Agents Association were held and the proposal was discussed in detail. The points brought out by the SCCL as given in para 6 above were also discussed.

(ii). The statement of the SCCL that the VPT would be earning Rs.1093 lakhs per annum against the present earnings of Rs.647 lakhs is a mis-interpretation of the facts.

(iii). The assumption that a notional cargo of about 6.25 lakhs tonnes will be handled on account of utilisation of the system is purely arbitrary in the sense that in spite of availability of free berth days during lean period from December to March in every financial year, the VPT is not able to attract any additional cargo other than traditional and captive cargo. Extending concessional benefits based on notional cargo is not correct and will lead to a serious audit objection, more so where a private firm is involved.

(iv). As regards diversion of about 5 lakhs tonnes of coking coal from other ports and handling of 7.5 lakhs tonnes of additional cargo on account of the ESSAR, the VPT had discussed with the ESSAR who informed that they were not very sure about the materialisation of the traffic. The port has given comparison of revenue estimated by the SCCL and the estimates modified by the VPT, which shows a net loss of revenue of Rs.263.75 lakhs per annum to the Port.

(v). The port is spending a substantial amount on the modernisation of the cargo transfer system and construction of additional service centers and by 2002, there will be 6 additional berths, 14 higher capacity cranes and 2 grab un-loaders at the port which will increase the productivity making port more competitive to attract additional cargoes. If the benefit is extended to one party, there is every possibility of diversion of significant volumes of the cargo from the inner harbour to the outer harbour rendering the investment made by the Port infructuous.

(vi). A proposal to extend the inner harbour rates to outer harbour in respect of cargo which is meant for handling at inner harbour berths like fertilisers, steam coal, coking coal (i.e. other than captive cargo) has already been sent to the TAMP for approval and the same is under their consideration. This facility shall be an incentive to the trade to handle their vessels at the outer harbour berths instead of waiting at the anchorage. It will enable the shipping community to avoid the payment of the demurrage charge and there will be substantial reduction in the standing costs of the ship as the users will get a concession of about 25% on vessel related charges.

(vii). During the discussions with the users, it was suggested by the trade members to examine the feasibility of extending 10% discount on vessel related charges for any user who come forward to utilise the non-workable berth for cargo operations.

(viii). The port is not in a favor of extending the benefit of consolidated vessel related charge to the SCCL since it is strongly felt that it shall amounts to loosing sizable revenue of about Rs.2.5 to 3

crores per annum to the port. Also the present consolidated vessel related charges of Rs.3.5 lakhs for ETA operation have been proposed to be revised upward to Rs.8.5 lakhs (to be charged slab wise) for this operation which awaits TAMP's approval.

(ix). Two more points which were mutually agreed upon were (a) extending discount on berth hire charges if the performance exceeds the stipulated norm and (b) the discount on tariff for higher volumes of throughput.

8.1. Another joint hearing in this case was held on 3 April 2000 at the VPT along with the ETA (Dubai) case. At the joint hearing the following submissions 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 representations from us, the TAMP has still not fixed a proper tariff for ETA operations.

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

(b). The Government allows us 13.5% ROCE. Why should we 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 ceiling on the ROCE for a private party.

(iv). The SCCL says, heavy investments will be made, but, no details are available.

(v). The SCCL has given commitment of a minimum performance.

(vi). There is no case for concessions to 'shore based operations'.

(vii). We do not consider the third 'combined operations' at all.

(viii). (a). There will be a substantial freight differential (estimated at \$ 5 per MT) on the bigger vessels that ETA will service.

(b). Since, the charter terms vary substantially, the lines / shippers shall gain \$ 8 per MT depending on the speed of operation.

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

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

(i). We are making an (otherwise) unworkable berth operative. This will benefit the Port. Give me some concession.

(ii). No ceiling rate for our operation is fixed. We are agreeable to either TAMP or DG (S) fixing it.

(iii). The response of the detailed discussion with the VPT has come only on 27 March 2000. We are yet to study and respond.

Visakhapatnam Port Users Association (VPUA)

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

(ii). The VPT was originally avoiding ETA (Dubai) proposal. Then, they started supporting. Now, after three years, they oppose. This is a very strange inconsistency.

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

(iv). Cape-size vessels would not have come to VPT otherwise. This is an extraordinary achievement.

The Shipping Corporation of India (SCI)

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

The Rashtriya Ispat Nigam Limited (RINL)

The ETA is a monopoly. Why give subsidy to them?

M/s. ESSAR Steel Limited

(i). The ETA crane can do very well. It can handle 15000 MT per day, but barges are not available to carry the cargo into the Port.

(ii). Facilities for unloading 15000 MT both at outer and inner harbour will be required. Unless this happens, the system will not succeed.

(iii). Only a combination system like the SCCL's will work.

8.2. At the joint hearing, it was decided to give 10 days time to the SCCL to respond to the VPT's observations dated 27 March 2000. Some of the users who attended the joint hearing felt that the SCCL should arrange to organise some trial-runs to check on the operational factors, environmental hazards, etc. The SCCL agreed to arrange such trial operations. It was decided to wait for the report from the SCCL on the trial operation.

9.1. The SCCL submitted its comments on the observations of the VPT vide its letter dated 7 April 2000. A summary of the comments offered by the SCCL is given below:-

(i). The following points may be considered before taking a decision:

(a). The optimum and efficient utilisation of Port facilities that presently remain unutilised.

(b). The economic viability of the project (either private or public).

- (c). The competition from other neighbouring ports (Kakinada, Dhamra, etc.)
- (d). The handling of additional projected traffic and reduction of detention time of vessels at roads to zero level at all times of the year.
- (e). No investment from VPT's side.
- (ii). The calculations of financial benefits to the VPT are based on the assumption that additional cargo will use the available free berth days.
- (iii). It is presumed that 50% of the available free berth days shall be utilised for handling additional cargo which is increasing by 8-10% every year. Hence the facts with respect to the generation of additional cargo on utilisation of its system, which shall improve the berth availability, are not misinterpreted.
- (iv). The Multipurpose Berth constructed by the port at the outer harbour will handle containers and hence the system shall not economically clash with the investments made by the port.
- (v) The vessel related tariff for vessels utilising the SCCL system can be fixed on per-metric-ton basis. For quantity discharged on to the daughter vessels, same tariff as applicable to ETA can be made applicable by equating it with the average carrying capacities of the cargo and for the quantity discharged on to the shore system, a reasonable tariff similar to that fixed for ETA operations may be fixed.

9.2. The VPT has given its further comments on the request of the SCCL which are summarised below:

- (i). The Port welcomes the installation of innovative facilities by any user. Such facilities shall not, however, be detrimental to the interests of other users. In this case, the inference of the SCCL that the proposed system will not in any way economically clash with the investments made by the Port is not correct in view of the possibility of diversion of a substantial portion of inner harbour cargo to the proposed facility.
- (ii). No commitment regarding percentage discount can be given at this stage as the percentage discount depends upon the final rates of port dues and pilotage to be approved by the TAMP for various sizes of vessels. The figure stated in the VPT's letter dated 27 March 2000 is only indicative because after revision of the Scale of Rates the percentage discount may vary.
- (iii). The concept of consolidated vessel charges cannot be extended to the SCCL as the *modus operandi* does not come under the transshipment operation. Also, the fixation of per tonne rate will not be helpful in case of simultaneous discharge as it is not practicable to maintain data of the quantity discharged on to the shore and the daughter vessel.
- (iv). The inner harbour rates of port dues may be extended to vessels at outer harbour for draft availability of up to 10.7 meters. Beyond this, the port is not prepared to extend any concession to the SCCL since it amounts to loss of substantial amount of revenue to the Port.

(v). The difference in the amount payable towards vessel related charges for deploying cape size vessel at outer harbour vis-à-vis handy max vessels at inner harbour is not significant since in the later case, the user will be paying for more number of ship calls. Without any substantial increase in the expenditure, the user will get additional benefit of minimum 3 to 4 dollars per tonne in freight by deploying cape size vessels.

(vi). Till now the MCHS has not been demonstrated by the SCCL. It is too early to debate and decide about the concessions and rebates in the absence of actual data on productivity levels and technical feasibility of the facility.

(vii). Though the port is willing to sacrifice a certain amount of revenue if the proposal is beneficial to the customer in the overall interest of the nation, it becomes difficult to estimate such tangible benefits in the absence of practical results of the facility proposed.

10.1. The SCCL vide its letter dated 15 September 2000 has intimated that they have successfully carried out the trial operation of the system developed by them with coking Coal landed on account of SAIL. They have also submitted details of the discharge of cargo along with a report from marine surveyors.

10.2. The VPT has submitted its comments on the trial operation report of the SCCL. The VPT has given the following comments:

(i). The SCCL has carried out trial run for the vessel M.V. AMBER-K with the consent of the SAIL for discharge of imported coking coal at GCB, which is a regular along side berth for discharge of coking coal and not the ore berth.

(ii). The SCCL has used its system partly with two hooks out of total number of four hooks that could be worked for the said ship.

(iii). During the course of operation of the system the conveyors deployed were stopped due to frequent jamming as well as breakdown of the system. Hence, part of the cargo at these hooks was discharged by conventional method.

(iv). Carrying out of piece-meal operations at the convenience of the firm does not indicate the real performance of the system.

(v). The Survey report reveals that the output from the two hooks of the system was less than the output achieved at the other hooks worked on the conventional system.

(vi). Unless the system works satisfactorily, the proposal for extension of discount on tariff shall not be considered.

11. Another joint hearing in this case was fixed on 8 December 2000 in Visakhapatnam. The SCCL had sought an adjournment of the case. However, the joint hearing as scheduled was held. It was decided to give a hearing to the SCCL in Delhi. In the joint hearing held on 8 December 2000, the following points were made:

The Visakhapatnam Port Trust

- (i). The trial runs was held on a regular berth and the output was also low even there.
- (ii). If they off-load cargo faster, they get their return by reducing the turn around time. What more do they want?
- (iii). The claim for a part of the benefit of using a non-workable berth is also not valid. They have not used a non-workable berth.
- (iv). The Rules and Regulation of Indian Railway shall apply. The Port Railways have no Rules and Regulations of their own.
- (v). The delivery of wagons is at the convenience of Railways. Before the wagon are to be sent back to railways seven operations have to be completed, loading / unloading are only two out of those.
- (vi). Some free time (five to nine hours) is available to users, however, to the port, for seven operations 36/28 hour's free time is available. Beyond this, demurrages will apply.
- (vii). Grant of waiver of demurrage is at a total discretion of the Port. It is fraught with dangers. We do not want to be so vulnerable.

The Vizagapatam Chamber of Commerce and Industry

Where is the non-workable berth? The export of iron ore to China has picked up.

Visakhapatnam Port Trust and Indian National Shipowners' Association

- (i). Tariff shall be one fixed rate and incentives can be given for quantity (volume), speed (turn around) and use of non-productive assets. If concession is given for promoting innovation then its quantum and duration need to be defined. It cannot be forever.
- (ii). The concessions should be a part of a stated tariff and nothing *ad hoc* should be there.
- (iii). The inner harbour rates can be extended to outer harbour on draft considerations (10.7 meters).
- (iv). The INSA opposes grant of any consolidated charge for such installations.

12. The SCCL submitted further comments on the observations of the VPT on the operations carried out by them. In addition to reiterating its earlier comments it has stated as follows:

- (i). The trial was not carried out at an ore berth as no receiver was willing to bring in the vessel to the ore berth without the tariff being finalised.
- (ii). There can be minor initial teething problem as the concept is new and innovative which will be over come as more and more cargo is handled and the system is entirely streamlined.
- (iii). The system is primarily designed to operate with one or two floating cranes which were not used in the trial runs as no receiver was willing to bring in gearless vessel till a tariff is fixed.

(iv). No tariff concession is required for utilisation of the system at normal berths for all cargoes. A structured consolidated tariff may be fixed linked to the productivity achieved.

(v). It is to be clarified whether the consolidated tariff as applicable for transshipment will be applicable in a case where the daughter vessel / barge may not be available simultaneously with the mother vessel and the cargo has to be discharged and separately reloaded into the daughter vessel and / or barge for onwards carriage.

13. As was decided, a separate hearing for the SCCL was allowed on 15 February 2001 in New Delhi. The VPT was also invited to participate in the hearing. During the joint hearing, the following submissions were made:

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

(i). This is a new system. Teething problems will be there. Please be considerate in evaluating.

(ii). We have done a trial on the general cargo berth. The results are good.

(iii). We are not asking for subsidies. We want consolidated charges for an innovative operation.

(iv). We are not asking for priority on the Ore berth. Iron ore will always get the priority. In spite of exports to China has picked up, the berth is vacant for long periods. We only want to utilise the lean time.

(v). The VPT's own reports show an increase of 9.5% in the traffic. How can they say, there is no additional traffic?

(vi). This ore berth is a deep draft berth. With our innovative system, more large vessels can come giving advantages of scale to all parties.

(vii). We have learnt from the ETA case. We have overcome their infirmities.

(viii). This system can be seen as a handling gear. We are not asking for any concessions on other berths. We ask for concessions only when we use an otherwise unworkable ore berth for unloading of the cargo.

(ix). Significantly, the vessel-related charges for ore berths are much higher than for the other berths, so VPT will gain, if we make the ore berth work more.

(x). Trial runs were not conducted at the ore berths, as users were unwilling to pay more for the trial at the expensive berths. If a special rate can be fixed, we can have the trial there.

(xi). The conveyor system is well designed. It will occupy only the given area and operate within that. There will be no obstruction to ore loading.

(xii). We have proved that the system is workable. Only, we have not been able to prove the efficiency parameters. The TAMP can fix the efficiency parameters and, if necessary, give a graded Scale of Rates.

(xiii). The VPT has invested in modernisation. But that should not come in the way of more competition. Let us compete with them; and, let the user benefit.

(xiv). We are middleman undoubtedly. We are only a handling agent. Why should there be any objection to our investment in this system. After all, only a service provider has to arrange for these facilities.

Visakhapatnam Port Trust (VPT)

(i). The conveyor system is basically one type of gear of a handling agent.

(ii). The SCCL cannot be compared with ETA. The ETA has a turn-key operation contract. The SCCL is only a handling agent at the VPT.

(iii). At the ore berth, first priority will be to iron ore, second priority will be to oil transshipment; and, the SCCL will get only third priority.

(iv). When iron ore is being loaded, the SCCL cannot operate in ore berth 2 without obstructing the loading.

(v). We are spending Rs.100 crores on modernisation of many new cranes and will be able to unload 12000 MT per day. The SCCL itself has done so.

(vi). We are likely to install two heavy-duty (33MT) grab un-loaders at the general cargo berth in outer harbour to suit 1,00,000 MT vessels. We will be able to unload 18,000 MT per day. In this backdrop, how is the SCCL's venture innovative?

(vii). At the SCCL trial at GCB, the output was less than the normal output. Where is the advantage?

(viii). With our modernisation schemes, there will be no congestion at all. There is no particular attraction for new installations at a concessional rate.

(ix). The SCCL is only a handling agent. What extra cargo they will bring in. If they give a clear assurance of additional traffic, we can consider.

(x). As there is no particular advantage, we are, therefore, not in favor of this new system.

(xi). When cargo-handling operation is in progress we will not charge the SCCL for using our space to install their system. After all it is a part of their handling gear.

14. During the joint hearing, the SCCL submitted a copy of its reply to the Rashtriya Ispat Nigam Limited (VSP) on their objections. The SCCL also furnished its further written submissions reiterating its earlier comments, which are summarised as below:

(i). It is willing to pay cargo wharfage at normal prescribed tariff of the port for different cargoes. The benefit of lower wharfage may, however, be extended whenever it tranships cargo from vessel to vessel and / or whenever cargo landed at the port is reloaded on to another barge for onward carriage to a different port.

(ii). It is agreeable to pay 25% of the prescribed berth hire for vessels discharging cargo consigned to Visakhapatnam, on to its system at ore berth. Since ore berths does not have any shore crane facility and is generally a non-workable berth for cargo discharge, its system will gainfully utilise the idle capacity by generating additional revenue for the VPT.

(iii). Berth hire be collected on the basis of slab prescribed for vessels with GRT of 15001 to 30,000 since, the cargo proposed to be handled on to its system presently arrive in the vessels with GRT of 15001 to 30000.

(iv). As regards pilotage and port dues, the SCCL shall be given the benefit of the same consolidated charges as applicable on vessels for transshipment of cargo as the services are exactly similar to what is being extended to transshipment vessels. These transshipment vessels are also presently berthed at the ore berth.

(v). In case of simultaneous operation of both transshipment and discharge on to their shore based system, the tariff be fixed on the basis of per metric tonne based on the quantity carried by the vessel.

15. This Authority had already passed an Order on 16 May 2001, after reviewing its earlier Order dated 22 August 97 relating to fixation of consolidated charges on mother vessels for lightening operations carried out by a floating crane. The revised rates for transshipment of dry bulk cargo were approved as proposed by the VPT. While approving the revised rate, this Authority had ordered that the revised rates would be applicable to all cases of transshipment operation of dry bulk cargo including the case of the ETA (Dubai); and, the revised rate would replace the consolidated charge prescribed in its earlier Order dated 22 August 97.

16. 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). The SCCL has submitted its proposal for installation of an innovative cargo handling system at the VPT in the backdrop of this Authority's stated position about encouraging 'innovative systems'.

(ii). The proposed system will consist of a floating crane (for overside operations) and a conveyor belt system (for shore-based handling) each operating either independently or in tandem.

The floating crane is still being manufactured. The conveyor belt system, however, is ready and has also been subjected to a trial-run albeit somewhat unsatisfactorily.

(iii). (a). The SCCL has stressed the point, it will be innovative in the sense that it will make an unworkable berth work. The Ore Berth in the Outer Harbour has been constructed for export of iron ore. The SCCL claims that, with its (innovative) MCHS, it will make the Ore Berth workable (even) for imports. It is noteworthy that the Ore Berth remains empty especially in the lean season; and, the SCCL proposes to gainfully utilise this 'idle capacity'.

(b). The SCCL has accepted the position that at the Ore Berth first priority will be for iron ore, second priority for 'oil transshipment', and only third priority will be for its cargo.

(c). The SCCL has also recognised the position that there are special operational guidelines governing occupancy of Ore Berth-I and Ore Berth-II requiring compulsory vacancy of one or the other berth under stated conditions.

(d). The SCCL has specifically accepted the VPT stipulations that its MCHS operations must not

- hamper their installations;
- cause safety hazards;
- interrupt other traffic; and,
- result in loss of revenue.

(iv). Besides the other stated advantages, the more important additional advantage will be that larger size (i.e., cape-size) vessels can come to the VPT which may not otherwise happen. This has in fact been seen to happen in the case of the trial-runs organised by the ETA (Dubai) for use of its floating crane.

(v). (a). If there is additional traffic, and if the SCCL system is operated efficiently, it will result in decongesting the port besides yielding additional revenue for no investments by the Port. But, before such a happy situation can be countenanced, the conditions listed in paragraph 16.(iii).(d). above will have to be satisfied. It is necessary in this case to emphasise this aspect because one of the constituent units of the system (viz., the floating crane) is still not in position and the other constituent unit (viz., the conveyor belt system) has not really demonstrated its capabilities.

(b). As earlier stated, the conveyor belt system has not yet had a proper trial-run. Its only trial-run has been in a regular berth and not in the Ore Berth. Even in such a trial-run, the following problems were noticed:

- hardware problems like frequent jammings and many break-downs;
- handling problems like ability to utilise only two out of the four hooks available in the vessel;
- occurrence of spillages causing pollution and environmental hazards;
- poor standard of performance in the sense that the (other) two hooks operated in the conventional method could give greater output than the two hooks operated by the MCHS;
- accumulation of cargo at the discharge point leading to congestion due to limitation of the evacuation system;

- **aggravation of the evacuation system due to railway-related uncertainties (e.g., availability of wagons).**

It has to be recognised in this context that, even if there is improvement in the performance standard of the SCCL, its overall impact will still be hit by the systemic limitations cited above.

(c). The SCCL has sought to explain away the gaps in its trial-run with the observation that, in the absence of a special consolidated tariff for its operations, users have not been willing to bring in larger size vessels for (cargo) handling at the Ore Berth where they will have to pay higher vessel-related charges. This explanation is obviously not tenable for the reason that any operator propagating a new system will have to find his ways of demonstrating its feasibility and efficiency; he cannot expect this Authority to fix tariffs for experimental operations and trial runs or (even) expect the Port to accept such a proposition.

(d). Likewise, the SCCL has sought to meet the criticism about lack of guaranteed levels of traffic by stating that such guarantees are not possible in the absence of 'berth reservation'. The implication here, possibly, is that this Authority must persuade the VPT to work out 'a package' for an experimental phase of operation. This, again, is not a tenable proposition. The SCCL must do its groundwork to tie up all the issues instead of leaving them for this Authority to do the needful.

(e). Talking of 'guarantees', the SCCL has agreed to give guarantees about performance standards and accept penalties for under-performance. Although the standards stated in the proposal are 10,000 MT/day for the conveyor belt system and 15,000 MT/day for the floating crane, in this context, the SCCL has chosen to 'assure' only 8,000 MT/day and 12,000 MT/day, respectively. It is difficult to accept such steep reductions in performance standards. As has rightly been highlighted by the INSA, there will be little point in talking about a performance level of 8,000 MT/day when, with the new investments that are being made, the VPT itself can achieve much more.

(vi). (a). The SCCL has presented the proposal about its MCHS in three facets –

- **overside operations with the floating crane;**
- **shore-based handling with the conveyor belt system; and,**
- **a joint working of both.**

(b). The SCCL has requested for a special consolidated tariff for its floating crane operations citing the special transshipment model prescribed for the ETA (Dubai). It is relevant here to point out that the example of the ETA (Dubai) is somewhat outdated in the sense that this Authority has prescribed on 16 May 2001, in supersession of its earlier special prescription in favour of the ETA (Dubai), 'common rates' for transshipment of dry bulk cargo as proposed by the VPT. In other words, the 'common rates' (and, the attached conditionalities) will apply to the transshipment operation using the SCCL floating crane also whenever it is ready and commissioned; there will be no need for any separate prescription of rates (and, conditionalities) exclusively for the SCCL. Significantly, in the joint hearings, the VPT and many of the users have argued

against 'special arrangements' and pleaded for common rates with concessions for better performance.

(c). The SCCL has requested for a special consolidated tariff (even) for its conveyor belt system. The logic is that it can augment cargo handling by about 10,000 MT/day which will considerably reduce the turnaround time of vessels and thereby enable the VPT to maximise its utilisation of the Ore Berth. The basic point to be recognised in this context will be that the conveyor belt system involves 'shore-based handling' and cannot, therefore, qualify for concessions available to transshipment operations. The SCCL itself also admits this distinction; in fact, there is somewhat of a pathetic plea that at least the cargo that is subsequently reloaded on barges to go to other ports must be recognised as 'transshipment'!

Apart from the basic distinction described above, the claim of this system for special consideration has been challenged on other considerations also by the VPT and others like the INSA, the VCCI, and the SCI. It has been argued that, unlike in the case of floating cranes where additional revenues accrue through operations of daughter vessels, in this case, there are no such accruals; on the contrary, there may be a loss of revenue because of a possible shift of Inner-Harbour-traffic to the Outer Harbour; the feasibility/efficiency of the system has not been demonstrated; and, in any case, as explained in paragraph 16.(v).(b). above, its capability will be constrained by systemic limitations. In the face of this stark factuality, it will be difficult to justify any special consideration for grant of concessions in this case.

(d). The SCCL has also requested for special consideration to the facet of 'joint operations' of the floating crane and the conveyor belt. The VPT has peremptorily dismissed this proposition. Its contention is that, when there can be no special consideration for the independent operation of the conveyor belt system, how can there be any consideration for a 'joint operation'? It will be difficult to refute the logic of this contention. Additionally, it has to be noted that any recognition of a 'joint operation' can open up possibilities of exploitation of the concession. Based on a nominal operation of the floating crane, the concession can be passed on to a full-fledged operation of the conveyor belt system which, in effect, will nullify the decision referred in paragraph 16.(vi).(c). above about not recognising 'shore-based handling' by the conveyor belt system for special consideration.

(vii). The VPT has invested about Rs.100 crores for installation by 2002 six new berths, 14 higher capacity cranes, and 2 grab unloaders. All this will result in substantial increase in productivity. That being so, as has been stressed by the VPT and many users, the conveyor belt system of the SCCL (with all its infirmities discussed earlier) for 'shore-based handling' of cargo holds no particular attraction. Again, as has been stressed by many users, the proposal is couched in very general terms without any specific projections by the SCCL who is only a handling agent without any hold on traffic volumes. This assessment of the proposal cannot but be seen to hold substance. The SCCL will have to do its groundwork more strenuously and tie up its proposal with greater specificity.

Significantly, the VPT has offered to consider giving 'discounts' if the SCCL can come up with clear assurances of additional traffic.

(viii). The SCCL has sought to bolster its proposal with calculations to show that adoption of its MCHS will fetch additional revenue of Rs.4.5 crores to the VPT. The VPT has countered this claim with its own calculations to show a net loss of over Rs.2.5 crores. There may be no need to go into the details of costing in this regard because the calculations are all based on 'assumptions', not reasoned projections; and, we have only the assumptions of one against the other. It has to be recognised in this context that, in cases like this, the onus to establish details will be on the party putting up the proposal (in this case, the SCCL).

Talking of 'assumptions', the SCCL assumption about additional traffic of 6.25 lakh MT is not borne out by recent trends; berths have been relatively 'free' in the lean season. Not surprisingly, therefore, the VPT has styled the SCCL assumption as "arbitrary".

(ix). In response to the VPT averments about its own investments leading to installation of additional capacities, the SCCL has raised a valid point about others making similar investments to compete with the Port Trust. But, the flaw in this case is that the SCCL investments are predicated on prescription of special arrangements. And, its proposal, as earlier stated in paragraph 16.(vii). above, is vague and couched in general terms to warrant special consideration. The SCCL will have to formulate its proposal with greater specificity and based on proven feasibility of the system(s). This Authority cannot be expected to work out the details and fill up the gaps.

(x). There have been observations about the monopolistic character of the systems installed by the ETA (Dubai) and the SCCL. In this connection, there have been demands that, to prevent exploitation by them of the special consideration given, their rates must also be regulated. As this Authority knows, the rates charged by the ETA (Dubai) have indeed been so regulated by the Director General (Shipping). The SCCL has also volunteered to submit to such regulation by the Director General (Shipping) or by this Authority. Since the Director General (Shipping) has already gone into this matter once in the context of the ETA (Dubai), the balance of convenience will seem to lie in favour of letting the rates be prescribed for the SCCL also by the Director General (Shipping).

18. In the result, and for the reasons given above, and based on a collective application of mind, this Authority decides the following:

(i). The floating crane of the SCCL (whenever it is ready and commissioned) is to be governed by the common prescription ordered by the Authority on 16 May 2001.

(ii). The SCCL request for a special rate for its conveyor belt system is rejected on the ground that it is a shore-based operation not amounting to transshipment.

Likewise, its supplementary request for treating at least cargo that is subsequently reloaded on barges to go to other ports as transshipment is also rejected.

(iii). In the light of the decision at (ii). above, the request for a special consolidated rate for the 'joint operation' is also rejected.

(iv). The SCCL is advised to formulate a fresh proposal with greater specificity, proven feasibility, and clear assurances about additional traffic if it wishes to pursue the VPT offer on concessions for better performance.

(S. Sathyam)

Chairman

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