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TARIFF AUTHORITY FOR MAJOR PORTS

G. No. : 126

New Delhi, 30 August, 2006

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby amends the Order No.TAMP/68/2005-IGTPL dated 11 May 2006 as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

TARIFF AUTHORITY FOR MAJOR PORTS
Case No. TAMP/68/2005 – IGTPPL

India Gateway Terminals Private Limited

Applicant

ORDER

(Passed on this 23rd day of August 2006)

This Authority had passed an Order number TAMP/68/2005-IGTPPL on 11 May 2006 relating to proposal from the India Gateway Terminal Private Limited (IGTPPL) for levy of charges for lashing / unlashng, stowage planning and supervision charges. The Order was notified in the Gazette of India on 30 May 2006 vide Gazette No.91. This Authority in the said Order has approved the following consolidated charges with retrospective effect from 1 April 2005:

Schedule 3.7 – On board Stevedoring Charges

Particulars	Rate per Container	
	Foreign (in US\$)	Coastal (in Rs.)
Lashing unlashng / stowage planning and supervision charges	7.86	210/-

2.1. With reference to the said Order, the Cochin Steamer Agents Association (CSAA) has made a representation on various points. Subsequently, on 18 July 2006, an opportunity was given to the CSAA to express their views on the said Order passed by this Authority when the officials of the Cochin Port Trust, IGTPPL and some of the members of the Container Shipping Lines Association (India) were also present. The main points made by the CSAA in their written submission and at the hearing are summarised below:

- (i). The IGTPPL did not provide the relevant services from 1 April 2005; and, therefore, they should not raise any retrospective bills on the grounds that the rates were approved by TAMP with effect from 1 April 2005.
- (ii). If these charges are applied with retrospective effect from 1 April 2005, Shipping Lines would end up paying for the element of stowage / supervision twice, i.e. to IGTPPL as well as to Private Terminal Operators, in view of the on going Industrial Dispute.
- (iii). The IGTPPL have undertaken on board lashing / unlashng work only from July 2005 and Associated Yard Services from January 2006, and therefore, it would not be agreeable and fair for Shipping Lines to pay these charges in toto at the TAMP approved rate with retrospective effect from 1 April 2005.
- (iv). The consolidated charges fixed for this activity should be split up.
- (v). It has requested that the charges of Rs.125/- towards stowage planning and supervision included in the on board stevedoring should be kept in abeyance till the Industrial Dispute is settled.
- (vi). The documentary evidence of the rate quoted by some of the contractors, furnished by IGTPPL for Rs.250/- per box includes various other services, apart from lashing / unlashng work. No documentary evidence was called for by TAMP, and had this been asked for, the CSAA would have definitely provided the same, as the rate of Rs.150/- per box formed an integral part of the THC break-up.
- (vii). The rate quoted by IGTPPL which was relied upon by TAMP to fix the relevant charges did not correctly capture the market condition. The rates levied earlier for offering such services by the private contractors were much lower than the one off case produced by the IGTPPL.

2.2. The Terminal Operators Association of Kochi (TOAK) has also made a written submission reiterating most of the points made by the CSAA.

3.1. The submissions made by the CSAA and TOAK were forwarded to the IGTPL for their comments. The IGTPL in response has furnished its comments and has also clarified the points at the hearing held on 18 July 2006. The explanation furnished by IGTPL in response to the submissions made by CSAA are as follows:

- (i). The Order of TAMP had been implemented prospectively and bills were raised only from the actual dates from which the relevant services were started to be provided by them. In order to avoid confusion, TAMP may amend the Order to specify the exact date from which the services were commenced.
- (ii). It has no reservation in bifurcating the consolidated charges as follows:
 - (a). Lashing / unlashings of containers - Rs.225/-
 - (b). Stowage planning - Rs.125/-
- (iii). They further announced that the terminal would not provide this service from 1 August 2006 and the agents could make their own arrangements for carrying out these operations. Nevertheless, it would levy the agents for the past period when it actually provided the services.
- (iv). CSAA should not shift the burden of industrial dispute between them and their workers by requiring the IGTPL to absorb the cost of services provided

3.2. Taking into consideration the various issues raised in the hearing, the IGTPL, CSAA and COPT were advised to initiate the following action:

- (i). The IGTPL should inform the actual date from which the relevant services were provided by them. While conveying this information, they should also secure the agreement of CSAA on this date.
- (ii). The CSAA to produce copies of contract between the relevant service providers and the Lines to the COPT to show that the rate quoted by IGTPL was not correct. Adequate documentary evidence should be provided in this regard to show that such rate was the prevailing rate in the market for a sufficiently longer duration of time prior to taking over the services by IGTPL.
- (iii). The COPT should verify the authenticity of the claim made by CSAA and furnish its recommendation to TAMP.

4.1. With reference to the decisions taken at the hearing, the IGTPL has furnished the relevant information / clarification along with consent letter of CSAA on the date issue as explained below.

- (i). The IGTPL commenced rendering the lashing / unlashings services with effect from 1 July 2005.
- (ii). The services relating to stowage planning and supervision were rendered from October 2005, however, the charges for this service were levied from 1 July 2006 since the approval of the TAMP was awaited.
- (iii). The CSAA's letter forwarded by IGTPL also confirms that the date of commencement of lashing / unlashings services by IGTPL is with effect from 1 July 2005.

As regards stowage planning and supervision, the CSAA has stated that since the private terminal operators were required to provide this service till January 2006, this tariff item may be levied by IGTPL from 1 January 2006 only.

- 4.2. The COPT has clarified the following:
- (i). It has confirmed the date of commencement of lashing / unlashng services by IGTPPL is from 1 July 2005, and stowage planning and supervision is from 1 October 2005.
 - (ii). It has also furnished its report on the documentary evidence furnished by CSAA as summarised below:
 - (a). The Cochin Steamer Agents Association (CSAA) has forwarded certificates and bills collected from feeder vessel operators as documentary proofs, which shows that Rs.150/- per box was collected as lashing / unlashng charges from the MLO's, but they have not forwarded copies of contract between the relevant services providers and the lines to show that the rates quoted by IGTPPL are not correct.
 - (b). The bills furnished as documentary proofs relates to the period ranging from 2004 to March 2005. From this it can be concluded that Rs.150/- per box was prevailing in the market for sufficiently longer period of time prior to the IGTPPL taking over of the service from 1 July 2005.
 - (c). Prior to the IGTPPL taking over the terminal, Rs.150/- per box was charged towards lashing / unlashng. The present rate of Rs.225/- per box levied by the IGTPPL is based on offers received from tendering processes. The IGTPPL had invited fresh quotation for carrying out lashing / unlashng containers and the lowest offer received was Rs.230/- per box. The firms who have participated in present tender had in the past offered Rs.150/- per box but as per the present market rate lowest quotation is Rs.230/- per box. Therefore, the rate quoted by the IGTPPL at Rs.225/- per box for lashing / unlashng is reasonable.

5. With reference to the totality of the information furnished, the following position emerges:
- (i). The IGTPPL, COPT and CSAA all have unanimously confirmed that the date of commencement of lashing, unlashng services by IGTPPL is from 1 July 2005. Even the IGTPPL has suggested to specify the date from which the tariff is to be levied to avoid any ambiguity in this regard. That being so, the earlier Order is amended to specify that the tariff for lashing / unlashng will be applicable from 1 July 2005.
 - (ii). As regards charges for stowage planning and supervision, the CSAA has made a vague remark that this tariff may be levied from 1 January 2006 on the grounds that the private operators were allowed to offer this service till that period. It has not specifically mentioned about the date of commencement of this service by the IGTPPL. The IGTPPL is entitled to levy tariff from the date from when it has started providing the services. The IGTPPL has reported that the services relating to stowage planning were rendered with effect from 1 October 2005. Even the COPT after verification at its end has confirmed that the stowage planning and supervision services were provided by the IGTPPL from 1 October 2005. That being so, the earlier Order is amended to specify that the tariff for stowage planning / supervision will be will be applicable from 1 October 2005.
 - (iii). The CSAA has suggested to split the existing rate approved by this Authority. This is perhaps required since the application of the tariff for these two services are from different dates. The IGTPPL has expressed no reservation to bifurcate the existing rate into two i.e. lashing / unlashng charges and stowage planning and supervision charges.

The IGTPPL in its initial proposal itself had indicated the components of the composite on-board stevedoring rate which also finds a mention in the Order dated 11 May 2006. While bifurcating the composite rate, the tariff for foreign-going is prescribed in US dollar terms by adopting the exchange rate of Rs.44.55 as applied while prescribing the composite rate in May 2006. Likewise, the tariff for coastal container is prescribed at 60% of the rate applicable for the foreign container in line with the revised tariff guidelines which was also followed while prescribing the rate in May 2006.

- (iv). The Industrial Labour dispute referred by the CSAA is not for this Authority to intervene. Likewise, it is not found necessary for this Authority to approve or disapprove the proposed change in the operational arrangement in lashing / unlashing of containers which the IGTPPL wanted to introduce from 1 August 2006. The relevant provisions of BOT Agreement would govern this issue and COPT should ensure its compliance.
- (v). Another main issue raised by the CSAA is about the reasonableness of the lashing / unlashing charges proposed at Rs.225/- per box by the IGTPPL as against Rs.150/- per box levied prior to the IGTPPL taking over the operations.

The COPT on verification of the documents furnished by the CSAA has concluded that Rs.150/- per box was levied by the private operators prior to the IGTPPL taking over the operations. The CSAA has, however, not furnished copies of contract between the relevant services providers and the lines to the COPT to show that the rates quoted by IGTPPL are not correct.

The COPT has confirmed that the rate of Rs.225/- per box levied by the IGTPPL is a market based rate taking into consideration the offers received from tendering processes. The lowest offer received by IGTPPL is reported to be Rs.230/- per box. During the fixation of the rate in May 2006 also, the IGTPPL had furnished to COPT copies of quotation of some of the contractors which were in the range of Rs.236/- to Rs.250/- per box.

The COPT has categorically certified that the rate for lashing / unlashing at Rs.225/- per box levied by the IGTPPL is a market based rate and is reasonable.

In view of this position, it is not found necessary to review this rate at this juncture.

6. In the result and for the reasons given above, and based on a collective application of mind, this Authority amends the Order dated 11 May 2006 to read as follows:

Schedule 3.7. – On board Stevedoring

Particulars	Rate per Container	
	Foreign (in US\$)	Coastal (in Rs.)
(i) Lashing / Unlashing charges	5.05	135/-
(ii) Stowage planning and supervision charges	2.81	75/-

Notes:

- (1). *The charges for lashing / unlashing prescribed at (i) above will be applicable from 1 July 2005.*
- (2). *The charges for Stowage planning and supervision prescribed at (ii) above will be applicable from 1 October 2005.*
- (3). *These charges would also apply on containers shifted onboard vessels.*

(A.L. Bongirwar)
Chairman