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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 29

New Delhi,

15 January 2021

NOTIFICATION

In exercise of the powers conferred under Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from Chennai Port Trust (CHPT) for revision of estate rentals at CHPT, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/43/2020-CHPT

Chennai Port Trust

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Applicant

QUORUM

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. Sunil Kumar Singh, Member (Economic)

ORDER

(Passed on this 28th day of December, 2020)

This case relates to a proposal received from Chennai Port Trust (CHPT) vide its letter No.A.O.(SOR)/Estate Rental / 2019 / F dated 6 October 2020 for revision of estate rentals at CHPT.

2. The estate rentals of CHPT were last approved by this Authority vide its Order No. TAMP/56/2014-CHPT dated 20 December 2014. This Order was notified in the Gazette of India on 9 January 2015 vide Gazette No 13. The schedule of rate (SOR) structure approved for CHPT estate came into effect after expiry of 15 days from the date of notification of the said Order in the Gazette i.e. from 24 January 2015 and was valid for a period of 5 years i.e. upto 23 January 2020.

3.1. At the request of CHPT vide its letter dated 06 February 2020, the Authority vide its Order No. TAMP/56/2014-CHPT dated 20 February 2020 (notified on 03 March 2020) extended the validity of the existing SOR for estate of CHPT for 3 months till 23 April 2020 or till the effective date of implementation of the revised SOR, whichever is earlier.

3.2. Since the validity of the existing SOR has already expired, the CHPT was requested vide letter dated 22 September 2020 to file the proposal for revision of estate rentals for the CHPT, following the extant Land Policy Guidelines.

4.1. In this backdrop, the CHPT vide its letter No.A.O.(SOR)/Estate Rental / 2019 / F dated 6 October 2020 has come up with its proposal for revision of estate rentals at CHPT. Considering the annual escalation of 5% implemented by CHPT as per its existing Rent Schedule, the increase proposed by the port is reported to be in the range of 0.17% to 1.28% for different categories of land. In respect of land at T.H. Colony, the increase was at about 152.50% over the prevailing escalated lease rent.

4.2. The CHPT vide its proposal furnished the proposed draft Scale of Rates (Estate Rental SOR), Copy of LAC Report, Copy of valuation report and Copy of Board Resolution No. 76 dated 11.9.2020. The proposal includes the comparative statement between the existing SOR and the proposed SOR.

5. In accordance with the consultative procedure prescribed, a copy of the CHPT proposal dated 06 October 2020 was forwarded to the concerned users/ user organizations / BOT Operators vide e-mail dated 22 October 2020 seeking their comments. Some of the users / user organizations / BOT Operators have furnished their comments. The said comments were forwarded to CHPT as feedback information.

6. On initial scrutiny of the proposal of CHPT, additional information/ clarification were sought from CHPT vide e-mail dated 10 November 2020.

7.1. A joint hearing on the case in reference was held on 1 December 2020 through Video Conferencing. At the joint hearing, the CHPT made a brief power-point presentation of its proposal. The CHPT and users/ user organisations have made their submissions during the joint hearing.

7.2. As decided at the joint hearing, some of the users/ user organisations/ BOT Operators have furnished their comments/ additional submissions on the CHPT proposal. These comments were forwarded to CHPT as feedback information.

8.1. In this backdrop, the CHPT vide its e-mail dated 21 December 2020 has stated the following:

- (i). TAMP has forwarded the comments of trade wherein the trade has represented to TAMP to reject the proposal in full and return the proposal by extending the existing SOR, for a further period of 24 months.
- (ii). During the joint hearing also, Trade has objected for revision of estate rentals and requested to continue the existing SOR.
- (iii). Hence, in view of the above, CHPT proposes to withdraw the proposal submitted to TAMP vide its letter dated 06 October 2020. However, a separate proposal for fixation of rates for the following areas will be sent separately to TAMP:
 - (a). open space-paved outside the Port at Rajaji salai;
 - (b). Open space-unpaved / Royapuram bridge at Rajaji Salai;
 - (c). Open space Land – unpaved at Ibrahim Salai; and
 - (d). Open space Land – unpaved at GM Pettai Road,
- (iv). Therefore, TAMP is requested to extend the existing SOR for a period of two years with the same rates, terms and conditions.

8.2. The CHPT has neither responded to the comments of the users nor has furnished the additional information/ clarification sought from CHPT.

9. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the arguments made by the concerned parties will be sent separately to them. These details will also be made available at our website <http://tariffauthority.gov.in>.

10.1. Based on the objections made by the various users/ user associations, the CHPT has proposed to withdraw its proposal of October 2020 and has requested to extend the validity of the existing SOR for a period of two years.

10.2. Given that the Port has expressed its desire to withdraw its October 2020 proposal seeking revision of the estate rentals at CHPT, this Authority is inclined to close the proposal of CHPT for revision of its estate rentals dated 06 October 2020, as withdrawn. The revised proposal as and when received from CHPT shall be considered afresh.

10.3. The CHPT has requested to extend the validity of its existing SOR for a period of two years. In this regard, it is to state that the original validity as prescribed by the Order No. TAMP/56/2014-CHPT dated 20 December 2014 has expired on 23 January 2020. Thereafter, based on the request made by CHPT earlier, the validity was extended

for a period of 3 months and the said extended validity has also expired on 24 April 2020, as brought out earlier.

10.4. Thus, based on the request made by CHPT and in order to avoid a vacuum in the estate rentals, it is felt appropriate to extend the validity of the existing estate rentals at CHPT for a period of two years, from the expiry of the original validity of the lease rentals.

10.5. Given that the validity has already been extended earlier for a period of 3 months, this Authority extends the validity for a balance period of 1 year and nine months i.e. from 24 April 2020 to 23 January 2022. The CHPT is advised to file its proposal for revision of its estate rentals atleast 3 months prior to the expiry of the extended validity period. The annual escalation of 5% in the rentals shall continue to apply during the extended validity period.

(T.S. Balasubramanian)
Member (Finance)

SUMMARY OF THE COMMENTS RECEIVED FROM THE USERS / USER ORGANISATION AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY.

TAMP/43/2020-CHPT	:	Proposal received from the Chennai Port Trust for revision of estate rentals at CHPT.
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A summary of the comments furnished by some of the concerned users/ user organizations / BOT Operators and the comments of CHPT thereon is tabulated below:

Sr. no	Comments of Users or user organizations/BOT Operators
1.	Chennai International Terminals Pvt. Ltd. (CITPL) vide its e-mail dated 03 November 2020.
1.	The 2014 Land Policy Guidelines does not apply to CITPL and would have not application to the SOR to be paid by CITPL to CHPT in any manner whatsoever -
(i).	The 2014 Policy envisages allotment of land inside custom of land inside custom bond area only for a) fresh allotment of land pursuant to clause 15.1 of the 2014 Policy, and ii) renewal of existing leases pursuant to clause 15.2 of the 2014 Policy. In view of the allotment of land to CITPL neither being a fresh allotment nor a renewal of an existing lease, the 2014 Policy does not apply to CITPL.
(ii)	The 2014 Policy clearly mentions that the Policy is not applicable to BOT Projects for which separate guidelines already exist. It is a matter of record that CITPL is a BOT Project, and accordingly the 2014 Policy would not be applicable to CITPL.
2.	In view of the above, it is clear that the proposal for the revision in the SOR as enclosed in the letter would not be applicable to CITPL owing to such proposal being based on the 2014 Policy.
3.	It is a further matter of record that pursuant to the License Agreement, CITPL has not been allotted land on the monthly license basis but instead has been allotted land for the entire duration of the License Agreement, and accordingly, the proposal for revision of SOR enclosed in the Letter does not apply to CITPL insofar it relates to rates on monthly license basis.
4.	For the reasons mentioned above, any general revision in estate rentals at CHPT, as enclosed in the letter, approved by TAMP would not be applicable to CITPL.
5.	This letter clarifies on these issue and TAMP would swiftly act to restrain CHPT from making any revision in the SOR for the estate rentals to be paid by CITPL pertaining to the License agreement. This letter is being issued without prejudice to CITPL's right, claims and remedies under the License Agreement and under law and equity. CITPL reserves it's all right and interest and nothing stated herein should be construed as waiver or estoppel for enforcement of rights and entitlements of the CITPL.
2.	Chennai Port Stevedores Association (CPSA) vide its e-mail dated 4 November 2020
	The Association, representing the primary and front end business development stakeholders of Chennai Port, we are shocked to see this proposal from the Port, at a time when the Nation is reeling under severe economic hardships and the people are looking towards the Government for bail out packages and business friendly initiatives. This move by Chennai Port is neither business friendly nor is it a well thought out proposal. Merely stating that the last revision was done on 24.1.2005 and the General Conditions stating " <i>The rates prescribed above are subject to automatic escalation @ 2% per annum (compoundable) and implemented in the month of January of every calendar year</i> " is NOT good enough reason to increase rates, at this time, which will only serve to push an already distressed Port and business, further into the doldrums. It is an inescapable fact and as published by the Indian Ports Association (IPA) that amongst all our Ports , Chennai is seeing the highest rate of cargo contraction and seeking

	<p>to relate the value of the land inside the Port to market Value, is a sure shot formula for further decline of cargo at Chennai Port.</p> <p>Chennai Port must take a realistic view and fix the Plot Rents, considering the Importers and Exporters who are operating in Chennai Port and competing in the International Market and thereby earning Foreign Exchange for the country.</p> <p>In the Ports proposal, it is seen that the consultant has taken a 2015, Tamilnadu State, ready reckoner rate of market value of lands as the value of the land proximate to the Port.</p> <p>This is untenable since the value of prime property in residential areas of Chennai city cannot be taken as the land valuation for cargo storage cannot be equated to prime residential areas.</p> <p>It is unfortunate that the city grew around the Port while other Ports do not have this problem.</p> <p>Given the low value of the few cargoes coming to the Port and the marked decline in other activities (workshops, dock offices etc) , the present situation calls for a reduction in estate rentals, rather than increasing the Estate Rentals every year, which adds to the Operation Cost, in turn increasing the landed or delivered costs.</p> <p>If we are to compare the other nearby Ports like Kamarajar Port, where they give more than 30 days free period, and where the plot rent is also much lower and with Karaikkal Port charging only ₹. 40/Sq.Mt and the other Ports like Kattupalli and Krishnapatnam also making aggressive marketing efforts with free storage, no cargo will come to Chennai Port.</p> <p><u>It is urged to REJECT Chennai Port's proposal, in full and return the proposal by extending the existing SOR, for a further period of 24 months, by which time ,we sincerely hope that our economy revives and there could some room to discuss a calibrated and staged increase.</u></p>
	<p>With respect to the Terms & Conditions of the Proposal, we request you to take the following points into consideration.</p>
	<ol style="list-style-type: none"> 1. Chennai Port must charge rates for space utilised correctly and as per scale of rate. Charging the full RCC rate, for allotted open space on which the allottee has, temporarily, erected a structure, which is more than 700 % of the open space rate, is illegal and unreasonable. This is more relevant when Section 12 of the Rules do not restrict erection of temporary structure. 2. The Port allots land for storage, on vessel to vessel basis. The SOR requires the rental charges to be paid within 3 days and if not paid within 3 days, Port levies double penalty which is not reasonable and not in the Rules. On occasions such as weekends, bank holidays and continuous festival holidays, it may not be possible to pay in 3 days. We request you to amend the conditions to reflect "3 working days" with a proviso of a reasonable penalty, instead of the double penalty. 3. Similarly, one-month security deposit is collected by the Port for land allotted on vessel to vessel basis. There have been commitments given and promises made that such security deposits will be refunded in 3 days after surrendering of the land. 4. It is regrettable that, even after 3 months of surrendering the land, the refunds are not made, causing huge hardships to our members. 5. We request you to include wording in the conditions that Port must refund in 3 days, failing which interest, is equal to the penalty levied by the Port for not paying the rental in 3 days, must be paid to the stevedore. In addition, strict disciplinary action must be taken against the erring officer (s) for this breach. 6. Another related issue is that if our members take the same plot for different vessels, they are made to pay one-month security deposit each time. If for instance, the plot is taken 12 times in the year, 12 security deposits are to be paid. Coupled with the Port delaying refunds, this causes a huge pecuniary strain on the stevedores. 7. With respect to change in the provisions of penal charges for unauthorised occupation (currently beyond 180 days) to 8th day onwards is extremely harsh and unwarranted, in these extraordinary times of cargo paucity at the Port. It is pertinent to point out that NO OTHER PORT has such harsh provisions for penal levy for a

	<p>mere act of delaying payment of rentals and we request you to direct Chennai Port to take lien on the cargo till such time the dues & penal interest are cleared.</p> <p>8. It is therefore requested that the conditions be altered to reflect that security deposits, once paid and to be refunded, can be adjusted for the next allotment, or refunded promptly.</p>
3.	Hindustan Chamber of Commerce (HCC) vide its e-mail dated 5 November 2020
	<p>We are dismayed to see such a proposal from Chennai Port, at a time when the Nation is reeling under severe economic hardships and the people are looking towards the Finance Ministry to offer bail out packages and business friendly initiatives.</p> <p>This move by Chennai Port is made at absolutely at the wrong time. Merely stating that the last revision was done 5 years ago and TAMP permitting an annual 2 % increase is not sufficient reason to increase rates.</p> <p>Chennai Port Traffic is reducing further and the bulk and break-bulk volumes are shifting to other nearby Ports. Indeed, Katupalli Port container traffic is a result of cargoes being taken away from Chennai Port's two terminals.</p> <p>Chennai Port must take a realistic view and fix the Plot Rents, considering the Importers and Exporters who are operating in Chennai Port and competing in the International Market and thereby earning Foreign Exchange for the country.</p> <p>In the Ports proposal, it is seen that the market value of land at Rajaji Salai is taken to compute the SOR for land inside Chennai Port. This is a wrong method since the value of prime property in residential areas of Chennai city cannot be taken as the land valuation for cargo storage.</p> <p>Given the low value of the few cargoes coming to the Port, requiring competitive estate rentals, HCC recommends a further reduction in estate rentals, rather than increasing the Estate Rentals every year, which gets only passed on to our members , who can ill afford to pay.</p> <p>If we are to compare the other nearby Ports like Kamarajar Port, where they give more than 30 days free period, and where the plot rent is also much lower and with Karaikkal Port charging only Rs. 40/Sq.Mt and the other Ports like Kattupalli and Krishnapatnam also making aggressive marketing efforts with free storage, no cargo will come to Chennai Port.</p> <p>It is, therefore, requested to REJECT Chennai Port's proposal, in full and request to return the proposal and also to extend the existing SOR, for a further period of 24 months, to give our economy a chance to recover</p>

1.2. The CHPT has not responded to the comments of the users.

2.1. A joint hearing on the case in reference was held on 1 December 2020 through Video Conferencing. At the joint hearing, the CHPT made a brief power-point presentation of its proposal. The CHPT and users/ user organisations have made the following submissions during the joint hearing:

Chennai Port Trust

- (i). SOR for the Estate was last revised in 2015 with a validity for 5 years. SOR is due for revision from 24.1.2020. Proposal submitted to TAMP as per Land Policy Guidelines, 2014. Increase proposed is very meager i.e. about 0.17% to 1.28% except at land at T.H. colony. The Land at T.H. colony is increased to 152.50% as per the Land Valuation Report.
- (ii). Considering the business scenario, the annual escalation has been proposed to decrease to 2% from 5%.

- (iii). License fee for cargo storage for land inside the Custom Bond Area has been revised by 0.59% for open space paved and 0.19% for covered space. No increase is proposed for open space unpaved.
- (iv). Security deposit for cargo storage under monthly license fee is reduced from 3 months to 2 months.
- (v). Time allowed for belated payment of license fee reduced from 15 days to 7 days to ensure timely payment.

Chennai Port Stevedores Association

- (i). Have given detailed letter to TAMP. This is the third revision in Scale of Rates since last 12 months and extremely disturbed for trade. In December 2019 – increase from 36% to 50% in SOR. In July – performance standard based increase by 2% and now again proposing minor increase. The question is why CHPT wants to increase the charges?
Nowhere documents says that port have to increase the charges, whereas many reasons are given by port saying TAMP is insisting to increase. TAMP is not insisting for increase, it only regulates the increase in tariff to make sure the tariff is as per the guidelines.

The CHPT is leading the cargo contraction over the last 12 months amongst all ports in India. Any further increase in rates if it is smallest also will further erode the cargo. Our sincere request to CHPT that this is not a time for CHPT to effect a one more increase, as there is enough damage have been done with the last two increases in last year. Please do not further divert cargo from CHPT. JSW has got over the one terminal at Kamarajar Port. The Dry Bulk cargo at CHPT may also be diverted. Dry bulk cargo cannot afford even a single paisa increase in rates.

Request TAMP to please dismiss the petition completely and tell CHPT to roll over until covid settled and till further better business opportunities.

Chennai Port Stevedore Association

- (i). Same norms to be applied for refund from CHPT as a written commitment whenever there is a deposit refund. Whenever the temporary plot is taken and return back, the refund should be done in 3 or 7 days, which should be mutual.

[Member (F) – TAMP : How much time is taking for the port to refund the deposit?]

[CPSA : With various reasons, it varies between one month to 45 days by CHPT to refund it].

Chennai Port Stevedores Association

- (i). We are not allowed to roll over the deposit, need to present a fresh deposit while taking new plot. When we are continuously depositing, already 3 to 4 deposits are lying with ports which is not refunded in time. Port should also refund the deposit within 3 to 7 days.

Chennai Port Stevedore Association

- (i). License fees of 2 times is still much higher. We suggest, Port should take a lien on cargo. If you take lien of cargo, immediately people will react on time.

Chennai Port Stevedores Association

- (i). Penalty to be imposed for non-payment of the dues within 7 days which is not right for trade. Port should take a lien on cargo. Request the Port to reconsider this aspect.

Marine Mercantile Dept., Chennai

- (i). We are purely Government office under the Ministry of Shipping. We have taken the office premises on lease from CHPT. Condition is to pay one year in advance and on taking the premises on nomination basis two years rent as a deposit. Pay and Accounts is objecting stating that only maximum amount of 6 months as an advance can be made as per rule. Please consider this aspect.
[Member (F) – TAMP : Port Trust may look into it.]

Director, Andaman and Nicobar Islands Port Administration

- (i). Being a Union Territory administration, our budget is coming from Ministry of Home Affairs. We are getting meager amount of budget for development purposes. Any increase in the rentals amounts will have impact on our budget. We request port to retain the existing rates.

PSA CITPL

- (i). We have already submitted that this revision as per the Land Policy 2014 is not applicable to BOT Operators (section 15.1 – Land Policy, 2014)

[Member (F), TAMP – Port will look into the matter whether it is applicable to BOT operators or not. TAMP's job is to fix lease rent for different areas as proposed by the Port and as per the Guidelines]

CHENSAA

- (i). Taking into account the pandemic situation of Covid 19, CHPT to defer any enhancement some more time.

CHPT (Chairman)

- (i). Very unhappy with the views of trade as whole proposal is reduction except to minor rounding off, except for our proposal to increase rates for our colony at Tondiarpet.

2.2. As decided at the joint hearing, some of the users/ user organisations/ BOT Operators have furnished their comments/ additional submissions on the CHPT proposal. The summary of the comments received from users / user organizations are tabulated below:

Sr. no	Comments of Users or users / user organizations / BOT Operators
1.	Indian Oil Corporation Limited (IOCL) vide its letters dated 23.11.2020 and 08.12. 2020
(i).	To retain the current License Fee / Lease Rent considering the prevailing pandemic situation and downward trend in all industrial activities due to COVID19.
(ii)	our company is a central public sector unit and serving nation by providing petroleum product to defense forces viz. Army, Navy & Air Force and hence you may please consider our request on the subject.
(iii)	our company is a central public sector enterprise catering to essential supplies of petroleum products including the requirement of defence forces. Hence it is requested that the licence fee / way leave charges may be retained at the same rates as prevailing considering the prevailing pandemic situation & downward trend in all industrial activities.

2.	Seamen's Employment Office vide its letter dated 04.12.2020
(i)	As per the proposal at III (1), an amount equivalent to 12 months license fee is to be paid. Delay in payment of lease rent will attract 15% interest from the due date (i.e. even prior to the commencement of the relevant lease year). Whereas, as per the pay and Accounts Officer (Shipping), Kolkata the amount of lease rent payable in advance for Central Govt. departments cannot exceed the total amount of lease rent applicable for six month, as per the General Financial rules of Govt of India.
(ii)	As per the proposal at III (3), a refundable security deposit of amount equivalent to two years' lease rental will be applicable for allotment on annual lease rent basis. Whereas, as per the pay and Account Officer (Shipping), Kolkata, the amount of security deposit for Central Govt. departments cannot exceed the total amount of lease rent applicable for six months, as per the General Financial Rules of Govt. of India.
(iii)	This Central Govt. office is established under the Merchant Shipping Act, 1958 and Functioning at the office space rented from the Chennai Port Trust at Anchor Gate Building. Hence, it is requested that the payment of lease rent prior to the commencement of the lease year mentioned at the proposal III (1) and payment of security mentioned deposit mentioned in III (3) and imposing penalty etc. of above proposal may be waived in respect of Central Govt. Offices i.e. the Mercantile Marine Department, Seamen's Employment Office, Government Shipping office and Seamen's Welfare office etc with Immediate effect.
3.	Shipping Corporation of India Ltd. vide its e-mail dated 07.12.2020.
(i)	the prevailing market rate of Estate Rent in the area, the lease rent and as well as the escalation of 5% every year of our SCI office at Jawahar Building, Rajaji Salai, Chennai is higher compared to a property of similar market value in the area.
(ii)	In the view of the above, it is suggested that the Chennai Port Trust to choose more favourable method for determining Estate rent and annual rent escalation in the lease provision.
4.	Andaman & Nicobar Administration (ANA) vide its e-mail dated 08.12.2020
	Being a Union territory, all the expenditure are met from the funds received from Central Government and since this department is a Government Department run on subsidies. Hence, the impact of the revision of rates would certainly effect the development activities, as such we would request you to exempt A&N Administration from the revision of rates for the office premises of CPT, Chennai.
5.	High Court of Madras, vide its letter dted 08.12.2020
	The CISF Security to the High Court has been extended by a judicial order and that the rents for the accommodation of CISF officers in the units belonging to the CHPT are being determined by a joint meeting comprising the Hon'ble Security Committee Members of the High Court, CISF, CHPT and State Government, since, it is the state Government which is paying the rents for the CISF accommodation. That apart, it is further informed that special concession has been obtained from the Ministry of Shipping, Union of India which is in vogue.

2.3. The CHPT has not responded to the comments of users.
