

(Published in Part - III Section 4 of the Gazette of India, Extraordinary)
TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 347

New Delhi,

11 September 2017

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 disposes of the representation received from the Central Warehousing Corporation as regards increase in lease rent on 42,493 sq. mtrs. of land allotted by the Kandla Port Trust, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/31/2017-CWC

The Central Warehousing Corporation

- - -

Applicant

QUORUM

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. Rajat Sachar, Member (Economic)

ORDER

(Passed on this 21st day of July 2017)

This case relates to the representation received from the Central Warehousing Corporation (CWC) with reference to increase in lease rent on 42,493 sq. mtrs. of land allotted by the Kandla Port Trust (KPT) to the CWC.

2.1. Before bringing out submissions made by CWC in its representation dated 19 February 2016, it is relevant here to state that the CWC had earlier in the year 1999 made a representation against increase in lease rentals effected by the KPT for 42,493 sq. mtrs. of land allotted by KPT to CWC. This Authority had disposed of the said representation of the CWC vide Order no.TAMP/22/99-KPT dated 11 January 2000 which was notified in the Gazette of India vide Gazette no.14 on 01 February 2000.

2.2. The decision taken by this Authority in the said Order dated 11 January 2000 in the concluding para 13 is reproduced here as under:

- “(i). The KPT is required to abide by the Allotment Letter and, thereafter, by the Lease Agreement when it is executed.*
- (ii). The first revision can be effective only after 10 years from the date of allotment i.e., with effect only from 16 November 1998.*
- (iii). The rate can be increased to the extent of 100% only. Accordingly, the rate fixed by the KPT at ₹16/- per Sq. Mtrs. Per annum is not valid, and with retrospective effect from 1 July 94.*
- (iv). The rate of lease rent for the land is fixed at ₹5.40 per Sq. Mtr per annum with effect from 16 November 1998.”*

3. Further, based on the proposal of the KPT for revision of rate structure of Kandla lands of KPT under the Land Policy Guidelines issued by Ministry of Shipping (MOS), this Authority vide Order No.TAMP/21/2010-KPT dated 25 March 2011 has approved the lease rent for the Kandla Lands, which was notified in the Gazette of India vide Gazette no.106 on 11 May 2011 following the applicable Land Policy Guidelines. This Authority has approved the lease rentals retrospectively for three quinquenniums i.e., July, 1999 to 31 December 2003, 1 January 2004 to 31 December 2008 and 1 January 2009 to 31 December 2013 based on the request of KPT.

4. The CWC vide its letter dated 19 February 2016 has made following submissions:

- (i). (a). The CWC has taken lease land admeasuring 42493 SQM from KPT as per allotment letter dated 07/10/1988, where CFS is being operated by CWC.
- (b). The terms of allotment letter provide an increase in the lease rent after expiry of every 10 years provided further that the increase of first 10 years will not exceed the original ground rent and increase after 20 years of the commencement of the lease shall not exceed twice the original ground rent.
- (c). The lease rent was ₹2.70 per Sq. Mtr. per annum effective from 16 November 88. The same was increased to ₹16/- per Sq. Mtr. per annum with effect from 1 July 94. The revised lease rent was intimated to the CWC in 1997; and, the KPT has demanded a claim with retrospective effect including interest. The CWC requested KPT that the revision of lease rent can be revised only after

10 years as per allotment letter, i.e. from 16 November 98 and matter of exorbitant increase in lease rent needs to review.

- (d). When KPT did not accept CWC's representation, the CWC approached the TAMP in the matter.
- (e). The TAMP disposed the matter vide Order dated 01/02/2000 stating that "*The rate can be increased to the extent of 100% of original rent only*".
- (ii). The CWC has reproduced the decision of the Authority Order dated 01/02/2000 which is already brought out at para 2.2. above and hence not reiterated:
- (iii). The lease deed of CWC-CFS Gandhidham is yet to be executed i.e. the situation at the time of TAMP Order dated 11 January 2000 still prevails and KPT should abide by the conditions of allotment letter.
- (iv). As per TAMP Order dated 11 January 2000, CWC is paying increased rent @ ₹10.80 per sq. ft. per year from 16 November 2008 and next revision should be effective from 16 November 2018 @ ₹21.60 per sq. ft. per year.
- (v). The KPT has revised the lease rent as per TAMP Notification dated 11 May 2011 effecting increase of approximately ten times of the rent being paid by CWC.
- (vi). The CWC has time and again requested KPT to withdraw the demand of lease rent (copies of letter(s) dated 28 November 2013, 31 March 2014, 30 July 2014, 29 August 2014, 16 December 2014, 22 January 2015, 08 May 2015 and 04 August 2015 already provided for reference and kind perusal) but of no avail. The KPT vide letter dated 17 July 2013 (copy already provided for reference) has agreed in principle that TAMP Order dated 11 January 2000 is applicable to CFS Gandhidham. But, KPT did not agree to revise the lease rent demands stating that revision of rent is approved by the KPT Board and will be applicable as per TAMP Notification dated 11 May 2011.
- (vii). The CWC is operating a Container Freight Station at the plot and exorbitant increase in lease rent will be difficult for the trade to absorb since there is cut throat competition between CFS Operators in the region and tariff cannot be revised from retrospective effect.
- (viii). The CWC is already paying lease rent of CWC – CFS Gandhidham as per TAMP Order dated 11 January 2000.
- (ix). In view of foregoing facts, it is requested to kindly intervene in the matter and KPT may be asked to honor the TAMP Order dated 11 January 2000 and to revise their demand note of lease rent in respect of CFS Gandhidham, accordingly.

5. With regard to the subject representation filed by CWC, the KPT was vide our letter dated 02 May 2016 requested to furnish its comments on the submissions made by CWC by 15 May 2016. This was followed by reminders dated 17 May 2016 and 24 August 2016.

6. In response, the KPT vide its letter dated 16 September 2016 has forwarded a copy of its letter dated 29 May 2016, wherein the KPT has made following submissions:

- (i). TAMP vide Gazette Notification no.106 dated 11 May 2011 had approved revised lease rent / ground rent with retrospective revision of the lease rentals for three consecutive slabs i.e., from July 1999 to 31 December 2003, 1 January 2004 to 31 December 2008 and 1 January 2009 to 31 December 2013 with the lease rentals shall bear an escalation at 5 % (compoundable) per annum for the period from July 1999 to 24 February 2004 and @ 2% thereafter.
- (ii). Accordingly, demand note for advance lease rent for land admeasuring 42,493 sq. mtrs. for the period from 16 November 2012 to 15 November 2013 amounting to ₹50,77,218 was issued to CWC under "F1" category as per the TAMP Order vide notification no.106 dated 11 May 2011.

- (iii). In response to above demand note, CWC had raised an objection and furnished a copy of TAMP Order on 11 January 2000 relating to representation made by the CWC against increase in lease rent by the KPT.
- (iv). The latest revision approved by TAMP vide Order dated 11 May 2011 is in suppression of the existing lease of Kandla land which has also been approved by the Board. The said revision has also been upheld by the division bench of the Hon'ble High Court of Gujarat.
- (v). Considering the Clause no.11 of the annexure to the allotment letter, which states that "all rules and regulations made by the Board of Trustees of the KPT under the provisions of the Major Port Trust Act, 1963 with the approval of the Central Government with regard to the use and enjoyment of the demised premises, shall be deemed to be a part of the lease deed and binding on the lessee" and accordingly CWC was requested to make payment as per the revised rate approved by the Board.
- (vi). Accordingly, KPT vide various letters has informed CWC that the matter has been examined by the KPT and informed that the latest revision approved by TAMP vide Order dated 11 May 2011 is in suppression of the existing lease rent for lease of Kandla land which has also been approved by the Board.
- (vii). The demand for annual lease rent as per TAMP Order dated 11 May 2011 in respect of Land admg. 42,493 sq. mtrs. issued to CWC are as under:

Sr. No.	Description / Kind of Demand note	Period	Amount (₹)
(i).	Advance annual lease rent (under "F1" category)	16.11.2012 to 15.11.2013	50,77,218
(ii).	Advance annual lease rent (under "F1" category)	16.11.2013 to 15.11.2014	51,77,960
(iii).	Advance annual lease rent (under "F1" category)	16.11.2014 to 15.11.2015	52,81,567
Total			1,55,36,745

- (viii). However, CWC has made payment at ₹5.40 per sq. mtr. per annum with effect from 16 November 1998 and ₹10.80 per sq. mtrs. per annum from 16 November 2008 onwards as per TAMP Order dated 11 January 2000.

7. Subsequently, the CWC has, vide its letters dated 05 August 2016, 28 September 2016, 18 October 2016, 25 November 2016, 13 December 2016 and 08 March 2017 made submissions mostly reiterating its points made in the representation dated 19 February 2016.

8.1. The CWC – CFS being a BOT operator, the dispute between CWC and KPT as regards applicable lease rent, the representation filed by CWC was taken up as a separate tariff case. Accordingly, as a part of the consultative procedure prescribed, joint hearing was held on 18 April 2017. At the joint hearing, the CWC and the KPT have made their submissions.

8.2. At the Joint hearing, the CWC has filed written submissions dated 18 April 2017. The CWC has mostly reiterated its earlier submissions. The new points made by CWC are given below:

- (i). The KPT allotted a plot admeasuring 42,493 sq. mtrs. (CFS Gandhidham) to CWC vide allotment letter dated 07 October 1988. The plot was taken over from KPT on 16 November 1988 for a period of 30 years:

Name of warehouse	Area	Period & date of possession	Lease rent at the time of allotment / possession	Date of possession
CFS Gandhidham	42,493 sq. mtrs.	30 years (16.11.1988)	₹2.70 sq. mtrs. per year	16.11.1988

- (ii). KPT vide letter No.LW/GN/1505/1388 dated 08 October 2012 asked CWC to pay lease rent in respect of CFS Gandhidham for the period from 16/05/12 to 15/11/13 amounting to ₹50,77,218/- (₹45.18,706/- @ ₹ 106.34 per SQM / Year + S/Tax), as per TAMP Notification dated 11/05/11. But, this office paid lease rent @ ₹ 10.80 amounting ₹4,58,926/-, requesting KPT to revise the lease rent demand note as per TAMP Order dated 01/02/2000. During the correspondence in the matter of CW Kandla-II, KPT vide letter dated 17/07/13 has admitted that TAMP Order dated 01/02/2000 applied to CFS Gandhidham.

CWC time and again vide letter(s) dated 28/11/13, 31/03/14, 30/07/14, 29/08/14, 16/12/14, 22/01/15, 08/05/15 and 04/08/15, 14/12/15, 18/02/16, 23/06/16, 13/12/16 and 08/03/17 have requested KPT to honour TAMP Order dated 01/02/2000 and to amend demand notes accordingly, but of no avail. Although, the KPT vide letter dated 17/07/2013 (copy furnished) agreed in principle that TAMP Order dated 01/02/2000 is applicable to CFS G'dham. But, KPT did not agreed to revised the lease rent demands stating that revision of rent is approved by the KPT Board and will be applicable as per TAMP notification dated 11/05/11

- (iii). The details of demand note raised by KPT vis-à-vis payment made by CWC as furnished by CWC are given below:

Sr. No.	Period	Particulars of demand note	Details of demand by KPT (in ₹)	Details of amount paid by CWC to KPT (in ₹)
(i).	16.11.12 to 15.11.13	LW/GN/1505/1388 dated 08/10/12 @ ₹ 106.34/ sq. mtr./ annum	45,18,706 + ST of 5,58,512	4,58,925 @ 10.80 per sq. mtr./ annum
(ii).	16.11.13 to 15.11.14	No demand note received from KPT	----	4,58,925
(iii).	16.11.14 to 15.11.15	No.LW/GN/1505/209 dated 04/10/14 @ ₹110.62 & Pr. Outstanding 16/11/12 to 15/11/14	47,00,576 + ST of 5,80,991 91,27,786 + ST of 11,27,392	4,58,925
(iv).	16.11.15 to 15.11.16	No demand note received from KPT	----	4,58,925
(v).	16.11.16 to 15.11.17	LW/GN/1505/32 dated 26/10/16 @ ₹134.40 (up to 31/12/2016) and ₹137.09 from 01/01/17	58,08,993 + ST of 8,17,349	4,58,925
Total			2,72,40,305	22,94,625

The above demand notes were raised by KPT as per TAMP Order dated 11/05/2011. Here, it will pertinent to mention that the TAMP Order dated 01/02/2000 specifically provides that "The rate can be increased to the extent of 100% only" i.e. ₹10.80 per SQM / year whereas as per TAMP notification dated 11/05/11 the rates as on 16/05/12 will be ₹106.34 per SQM / year i.e. almost ten times more, which will further increase per annum @ 2%. This is clear violation of point- 11.2 of said Authority's Order dated 01/02/2000. It is further to submit that lease execution is still pending and considering the point-11.2 of said Order of the Authority, conditions of allotment letter should prevail and rent should be increased to 100% of original rent only.

- (iv). The execution of lease deed is also pending with the KPT as till date KPT has not provided draft lease deed. Initially, the draft lease deed submitted to KPT during 2008 was not approved. Earlier the matter was linked to vacation of CW Kandla and KPT vide their letter No.LW/PL/2693-11/(b)-2/51 dated 27-29/08/09 stated that "Until and unless the plot inside cargo jetty near west gate No.1 (CW Kandla-II) is handed over back to KPT by CWC, we are unable to process the matter of registration of lease deed of the lands at Kandla and Gandhidham. The CW Kandla-I was vacated on 10/01/2011. During the process, the KPT asked CWC to furnish Completion Certificate in respect of CF'S G'dham. Later KPT vide letter dated 13-20/04/12 has informed the CWC that in compliance of instructions of Ministry the lease renewal / execution has been kept in abeyance till fresh guidelines from MOS. Meanwhile,

KPT letter No.LW/PL/1623-I(PT)/652 dated 01-05/09/12 and KPT letter No.LW/PL/1503-1/710 dated 10/10/12, deferred the lease execution by linking the matter of payment of lease rent of CW Kandla-II. Later, execution of lease was delayed for want of compensation claim and Land Policy 2014. The matter of lease execution is still pending at KPT end since, the approved draft lease deed is yet to be provided by KPT.

- (v). In the allotment letter dated 07/10/1988, it is mentioned that the allottees are also bound by the terms & conditions annexed / enclosed with the allotment letter. Clause (5) of the terms and conditions are relevant for this purpose which is reproduced as under:-
“Clause (5): The ground rent reserved for each plot may at the option of the Lessor be liable to be enhanced after the expiry of every 10 years in the case of 30 years’ lease provided that the increase in rent fixed at the expiry of first 10 years will not exceed the original ground rent and increase after 20 years’ of the commencement of the lease shall not exceed twice the original rent.”

The Authority while pronouncing Order dated 01/02/2000 considered that in the instant case wherein lease has not been executed, the conditions of allotment letter will prevail. The conditions still are same and KPT should abide by the conditions of allotment letter.

8.3. As agreed at the joint hearing, the KPT was vide our letter dated 18 April 2017 requested followed by reminder dated 09 May 2017 to take action on the following points arising out of joint hearing proceedings:

- (i). At the joint hearing, the KPT has submitted that 42,493 sq. mtrs. of land was allotted to CWC for warehousing purpose and this parcel of land is not covered by the License Agreement entered with CWC for operation of CFS at KPT. As agreed at the joint hearing, the KPT to confirm the purpose of allotment of land of 42,493 sq. mtrs. to CWC.
- (ii). At the joint hearing, the CWC has stated that CWC has taken land of 42,493 sq. mtrs. on 16 November 1988 for Gandhidham CFS. However, from the CWC letter dated 18 April 2017 attaching a copy of the KPT letter of Allotment dated 07 October 1988 to CWC, it is stated that area of 42,493 sq. mtrs. of land near new Kandla Free Trade Zone, New Kandla is allotted to CWC for providing open bounded space to importers / exporters.

The KPT was requested to clarify whether the said land admeasuring 42,493 sq. mtrs. allotted by KPT is at Kandla or at Gandhidham and the purpose for which it is allotted.

8.4. With reference to the point of action referred above, the KPT has subsequent to our reminder dated 09 May 2017 furnished its reply vide its letter dated 23 May 2017 which is as follows:

- (i). As per allotment letter, land admeasuring 42,493 sq. mtrs. is situated to the East of National Highway-8A, opposite manufacturing area and adjoining the plot allotted to the Food Corporation of India on its Northern side near Kandla Free Trade Zone, has been allotted to CWC for the purpose for Godowns and for providing open bonded space to importers / exporters.
- (ii). The area situated to the East of National Highway-8A, Gandhidham has been considered under Kandla Land under “F1” category of TAMP approved rate i.e. “Plots situated on SEZ side from Kandla Railway Station”. The land allotted to CWC is situated to the East of National Highway - 8A and the same has been considered under Kandla land.

9. The CWC vide its letter dated 28 June 2017 has again forwarded its letter dated 18 April 2017 with a request to consider its written statement and suitable Order may be passed to KPT honouring TAMP dated 01 February 2000.

10. 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 the relevant parties. These details will also be made available at our website <http://tariffauthority.gov.in>.

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

- (i). The representation filed by Central Warehousing Corporation (CWC) has arisen in view of increased lease rental demanded by Kandla Port Trust (KPT) from the year 2012-13 onwards based on lease rent of KPT lands approved by this Authority vide Order No.TAMP/21/2010-KPT dated 25 March 2011 in respect of land admeasuring 42,493 sq. mtrs. allotted by KPT to CWC vide allotment letter dated 07 October 1988 effective from 16 November 1988 for a period of 30 years.
- (ii). Before going into the representation of the CWC it is relevant here to state that the CWC has entered into a License Agreement with the KPT on 12 February 2002 for development of Container Freight Station (CFS) at KPT under BOT arrangement under Section 42(3) of the Major Port Trusts Act, 1963. The representation from the CWC stated that it pertains to land allotted by KPT to CWC for CWC- CFS. At that point of time, it was not clear from the representation of CWC whether the said land of 42,493 sq. mtrs. was forming part of the License Agreement entered by the KPT and CWC on a BOT arrangement for operation of CFS. That being so, the representation received from the CFS was registered as a tariff case and an opportunity of hearing was given to both CWC and KPT in the joint hearing held on 18 April 2017 to understand the whole gamut of the issue.

The CWC in its representation has stated that the area of 42493 sq. mtrs. is located at CFS Gandhidham. The KPT allotment letter dated 7 October 1988, however, states that the area of 42,493 sq. mtrs. of land is near new Kandla Free Trade Zone (New Kandla) for providing open bounded space to importers/ exporters. When the KPT was requested to confirm the purpose of use of the said land, the KPT has stated that the land allotted to CWC is [situated to the East of National Highway-8A, Gandhidham near Kandla Free Zone] for the purpose of Godowns and for providing open bonded space to importers/ exporters. That being so, the dispute relates to the area, mentioned in the letter of Allotment and KPT's response in this regard confirms this position. It is a different matter that the said area has been considered by KPT under Kandla Land under "F1" category while seeking revision of the lease rent proposed by the KPT and approved by this Authority in March 2011.

The representation filed by CWC relates to land admeasuring of 42,493 sq. mtrs. allotted by KPT to CWC in October 1988. The said land does not form part of the License Agreement entered by KPT with CWC in February 2002 for development of CFS at KPT. A different parcel of 1,40,000 sq. mtr. of land has been allotted to the CWC for CFS purpose as per Appendix 2 to the License Agreement of February 2002.

The KPT during the processing of this case has also confirmed that the land parcel of 42,493 sq. mtr. was allotted to CWC for the purpose for godowns and for providing open bonded space to importers/ exporters. In short, the said land admeasuring 42,493 sq. mtrs. allotted by the KPT to CWC in October 1988 is not forming part of the License Agreement entered between KPT and CWC for the CFS operations. This position was not clear earlier when the CWC filed the representation.

- (iii). In the current representation, the CWC has drawn reference to its earlier representation made in the year 1999 on the increased lease rental levied by KPT on 42,493 sq. mtrs. of land allotted to them by KPT vide allotment letter dated 07 October 1988 and the Order No.TAMP/22/99-KPT dated 11 January 2000 passed by this Authority disposing of the said representation.

The representation now made by CWC arises on account of lease rent demanded by KPT from 16 November 2012 onwards applying revised lease rent approved by this

Authority vide Order dated 25 March 2011 revising lease rent for Kandla Land as a whole.

The CWC has stated that as per clause 5 of the the terms and conditions attached to the allotment letter dated 7 October 1988 by KPT for allotment of 42,493 sq. mtrs. to CWC, the ground rent reserved for each plot may, at the option of the Lessor, be liable to be enhanced after the expiry of every 10 years during 30 years lease provided that the increase in rent fixed at the expiry of first 10 years will not exceed the original ground rent and increase after 20 years' of the commencement of the lease shall not exceed twice the original rent.

The CWC has further contended that the rate can be increased to the extent of 100% only i.e. ₹10.80 per sq. mtr./ year as per the said provision in the terms and conditions attached to the letter of allotment. The CWC has stated that at the revised lease rent approved by this Authority vide Order dated 25 March 2011 and applied by the KPT, the rate as on 16/05/12 will be ₹106.34 per sq. mtr./ year i.e. almost ten times more. The contention of CWC is that application of revised lease rent by the KPT as per the said Order of this Authority is clear violation of para 11.2 of this Authority's earlier Order dated 1 January 2000. The contention of the CWC is that the lease rent to be levied by the KPT should be as per the letter of allotment of October 1988 signed between the KPT and the CWC.

On the other hand, it is the stand of KPT that all rules and regulations made by the Board of Trustees of the KPT under the provisions of the Major Port Trust Act, 1963 with the approval of the Central Government with regard to the use and enjoyment of the demised premises, shall be deemed to be a part of the lease deed and binding on the lessee as per the clause no.11 of the Annexure attached to the Allotment letter. Citing this clause, the KPT has viewed that the request made by KPT to CWC to make payment as per the revised rate approved by the Board and Bills raised on CWC claiming lease rent as approved by this Authority in the Order of March 2012 is in order.

- (iv). As regards the point made by both KPT and CWC that the Lease Agreement between CWC and KPT on the said land has not been entered into between both the parties for whatsoever reasons, execution of lease agreement is the matter between the landlord port and the allottee of the land. It is beyond the purview of this Authority.
- (v). It is relevant here to state that the Ministry of Shipping (MOS), Government of India had issued a Policy direction on 9 September 2002 to this Authority under Section 111 of the Major Port Trusts (MPT) Act, 1963 refraining this Authority in entertaining representations made by individual parties, citing that this Authority has no power of adjudication in individual cases under the provisions of the MPT Act. The MOS in its subsequent letter No. PR-14019/36/2001-PG, dated 26 March 2003 has clarified that its direction dated 9 September 2002 does not relate to or prohibit this Authority in the matter of entertaining requests for interpretation / clarification in respect of Orders passed by this Authority relating to Scale of Rates. This direction was after the Order dated 11 January 2000 passed by this Authority in respect of the parcel of land admeasuring 42,493 sq. mtr. In compliance of the policy direction issued by the MOS, this Authority has passed an Order No.TAMP/85/2002-Genl. dated 20 September 2002 stating that this Authority will be unable to take up for consideration representations from individual parties in future.
- (vi). CWC – CFS is a BOT operator operating the Container Freight Station at KPT. In the past, the representation made by the Chennai International Terminal Private Limited (CITPL), a BOT operator at the Chennai Port Trust (CHPT) and the JNPT – CFS, a BOT operator at the Jawaharlal Nehru Port Trust (JNPT) on the issues regarding application of approved lease rentals on lands allotted for BOT purpose were entertained and clarification were issued by this Authority vide Order No.TAMP/28A/2010-CITPL dated 3 September 2010 and letter No.TAMP/68/2002-Misc dated 2 February 2015 respectively. It has emerged from the proceedings of the case on hand that the CWC – CFS at KPT has represented in the capacity of an allottee of land for other than BOT purpose and not in the capacity of the BOT

operator. The KPT has confirmed at the joint hearing that land was not allotted for CFS purpose. There could be several disputes between the land lord Major Port Trusts and individual licensee/ lessee/ allottee. This Authority is refrained from adjudicating the disputes between the Major Port Trusts and individual licensee/ lessee/ allottee arising from the provision of the license agreement/ lease agreement/ allotment letter in view of the policy direction issued by the MOS in September 2002. The CWC has not cited any ambiguity either in the tariff Order of January 2000 or in the tariff Order of March 2011 to issue clarification. Since this Authority is not the appropriate forum for adjudicating the said dispute, KPT and CWC may sit together, if they so wish, to resolve this dispute.

12. In the result, and for the reasons given above, and based on collective application of mind, the representation filed by the CWC is returned for want of jurisdiction. The CWC representation dated 19 February 2016 is treated as returned.

(T.S. Balasubramanian)
Member (Finance)

**SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT / CENTRAL
WAREHOUSING CORPORATION (CWC) AND ARGUMENTS MADE IN THIS CASE
DURING THE JOINT HEARING BEFORE THE AUTHORITY.**

TAMP/31/2017-CWC	:	Representation received from the Central Warehousing Corporation (CWC) for increase in lease rent on 42,493 sq. mtrs. of land allotted by the Kandla Port Trust (KPT)
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1. A joint hearing in this case was held on 18 April 2017 at the KPT premises. At the joint hearing, the CWC and the KPT have made the following submissions:

Central Warehousing Corporation
(Regional Manager)

- (i). Briefly explained its request.
- (ii). The CWC has taken land of 42,493 sq. mtrs. from KPT on lease from 16 November 1988 for Gandhidham CFS.
- (iii). As per the letter of allotment, the increase in lease rentals is only after 10 years and the rate can be increased to the extent of 100% only. The first revision is effective from 16 November 1998.
- (iv). However, the KPT revised the lease rentals from 1994 and the lease rentals were exorbitant. We represented to TAMP.
- (v). The KPT's argument was that the revised lease rentals had to be levied as the revised lease rentals are approved by Government. The lease rentals to be levied as per the letter of allotment.
- (vi). The TAMP has passed an Order in January 2000 stating that the KPT is required to abide by the Allotment Letter and, thereafter, by the Lease Agreement when it is executed.
- (vii). KPT has violated the TAMP's observation mentioned at para 11.2 of the TAMP Order dated 11 January 2000.
- (viii). We request the KPT to revise the lease rentals as per letter of allotment.

[Member (Finance): Is the Lease valid for 30 Years].

[Regional Manager - CWC: yes the Lease is valid for 30 Years].

Kandla Port Trust
(FA & CAO and Sr. Dy. CAO)

- (i). As per Clause 11 of the annexure to the allotment letter, all rules and regulations made by the Board of Trustees of the KPT under the provisions of the Major Port Trusts Act, 1963 with the approval of the Central Government with regard to the use and enjoyment of the demised premises, shall be treated to be a part of the lease deed and binding on the lessee.

- (ii). No lease agreement was executed so far.
- (iii). The land was allotted to CWC for the purpose of warehousing and not for Container Freight Station purpose. Hence, there was a violation by CWC.
- (iv). The request of CWC is nothing do with the fixation of lease rentals and the request is beyond the scope of mandate given to TAMP. Land has been allotted to others also. Most of them are paying.
- (v). May be at that point of time i.e., when the TAMP passed an Order in January 2000, the guidelines are not evolved. But afterwards, the Government has been issuing the Land Policy Guidelines from time to time which have to be followed in fixation of lease rentals. 2000 TAMP Order is not relevant. Quoting TAMP Order dated 11 January 2000 and requesting to revise the lease rentals is not correct as the Government issues the Guidelines from time to time.

[Member (Finance): Are other lessees paying the lease rentals as per the revised rentals in this kind of allotment of lands].

[Sr. Dy. CAO, KPT: Most of the lessees are paying the revised lease rentals and some of them have approached court of law].

- (vi). Hence, this case has to be closed here itself.

[Sr. Consultant: The dispute is related to allotment of land of 42,493 sq. mtrs. The KPT and CWC have entered into agreement for development of CFS. Does this land is covered under the license agreement for development of CFS]

[Sr. Dy. CAO, KPT: No. 42,493 sq. mtrs of land was allotted to CWC for warehousing purpose].

[KPT agrees to confirm in writing the purpose of allotment of 42,493 sq. mtrs. of land].
