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**TARIFF AUTHORITY FOR MAJOR PORTS**

G.NO.529

New Delhi,

25 November 2020

**NOTIFICATION**

In exercise of the powers conferred under Section 48, of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the representation made by Paradip East Quay Coal Terminal Private Limited (PEQCTL) to rectify the errors in Order no. TAMP/12/2014- PPT dated 21 February 2014 notified by TAMP fixing Reference Tariff for operation of Mechanised EQ berths no. 1, 2 and 3 at Paradip Port Trust (PPT), as in the Order appended hereto.

**(T.S. Balasubramanian)**

Member (Finance)

**Tariff Authority for Major Ports**  
**No. TAMP/12/2014-PPT**

Paradip East Quay Coal Terminal Private Limited     - - -

Applicant

**QUORUM:**

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

**O R D E R**

(Passed on this 28<sup>th</sup> day of October 2020)

This case relates to the representation made by Paradip East Quay Coal Terminal Private Limited (PEQCTL) to rectify the errors in the Order no. TAMP/12/2014- PPT dated 21 February 2014 notified by this Authority fixing Reference Tariff for operation of Mechanised EQ berths no. 1, 2 and 3 at Paradip Port Trust (PPT).

2.1            Based on a proposal filed by PPT, this Authority vide its Order no. TAMP/18/2008-PPT dated 14 July 2008 had fixed upfront tariff for construction and operation of a deep draught iron ore berth and a deep draught coal berth at the PPT, based on the stipulations prescribed in the Upfront Tariff Guidelines of 2008.

2.2.            Thereafter, based on a proposal filed by PPT, this Authority vide its Order no. TAMP/12/2014-PPT dated 21 February 2014 fixed Reference tariff for operation of Mechanised EQ Berth nos. – 1, 2, 3 at the PPT, based on the stipulations prescribed in the Reference Tariff Guidelines of 2013. The Reference tariff so fixed in February 2014 was after applying an indexation factor of 26.15% over the upfront tariff approved in the year 2008 for the deep draught coal berth, based on the enabling provisions stipulated in Reference Tariff Guidelines of 2013.

3.              Subsequent to this, the PPT has awarded the Project to the successful bidder; and, a Concession Agreement (CA) has been signed by PPT with Paradip East Quay Coal Terminal Private Limited (PEQCTL) on 02 May 2016.

4.1.            In this backdrop, the PEQCTL vide its email dated 18 July 2020 has made the following submissions:

- (i).            The PEQCTL is in advanced stage of construction/ mechanization of EQ-1, 2, 3 berths under BOT basis as per Concession Agreement signed with PPT. The work is in full swing and approaching towards completion of the project.
- (ii).            However, due to some factors considered by the Port Trust and TAMP for this Project, there are inadvertent errors in the Order, due to which PEQCTL is facing severe challenges with respect to very less free days and extremely high Storage Rates.
- (iii).            PPT had submitted a proposal to TAMP for fixation of Tariff for coal Import terminal in 2008. Based on the proposal of PPT, the TAMP has issued Notification (G. No 133) dated 16.08.2008, specifying storage charges on "different period groups" (for example: Rs. 12 per MT for 5 days' slab of 11 to 15" days period).
- (iv).            The PPT has taken the above mentioned 2008 notification as reference and submitted a proposal to TAMP for setting tariff for Export coal terminal on 23 January, 2014 and updated the same vide its letter dated 13 February 2014. Based on PPT proposal, TAMP has fixed the tariff and other parameters for this project by Gazette Notification No. 138 dated 19 May 2014, keeping the 2008 notification of Import Terminal as reference.
- (v).            While releasing the notification G.No.138, it was well understood that the base of setting tariffs and related charges was the Notification vide G.No.133 dated 16 August 2008. However, PPT and TAMP both have inadvertently taken few erroneous assumptions in their judgment which will be detrimental for the project. Such errors, if not resolved, would make this terminal

practically not usable by any user, and entire investment will become NPA immediately. A few examples of such erroneous assumptions are as below:

- (a). TAMP notification in 2008 (GN 133), which PPT and TAMP used as base to notify for the project in 2014, was for an Import Coal terminal, while current project is an Export terminal. Since there is a big difference between export and import business parameters, base for assumptions such as dwell time of cargo and storage charges are very different and dynamic.
- (b). TAMP 2008 notification (GN 133) was for a 10 MTPA Coal Import Terminal, while current project is a 30 MTPA Export Terminal. There is a substantial difference between the scale of 30MTPA and 10MTPA, and base assumptions are not properly aligned. Also a proper feasibility of operating parameters for 30 MTPA cargo handling were not conducted by the Port Trust.
- (c). TAMP has fixed the tariff for this project by order no. TAMP/12/2014-PPT in which TAMP has applied 26.15% WPI Indexation on tariff notified in 2008. However, TAMP and Port Trust had erroneously added "Per day Per MT" in storage charges instead of "different period groups", which inflated the storage charges by 500% over and above the 26.15% WPI Indexation, without any reasoning and basis. The said error has led to application of inflation twice and cumulative inflation index over 630% for the storage charges. Due to such abnormal storage charges, no customer is willing to sign a cargo handling agreement with us, which is a very alarming situation. The charges specified are unprecedented for storage in the PPP ports anywhere in India and abroad, and have no rationale.
- (d). As per Government of India upfront tariff setting guidelines of 2008, apportionment of Total Revenue Requirement from Cargo handling charges and storage charges should be in proportion of 98:1 respectively. However, the storage charges notified in 2014 circular, the revenue from storage would be 10-15 times more (due to the error) which violates the TAMP 2008 Tariff Guidelines [refer TAMP 2008 Guideline Annexure -III, Para (2)].
- (e). As per Government of India guidelines, free storage days for a coal terminal should be 25 days, and storage charges be applied only after that free period. But in this project, the free storage days provided are only 10 days which violates TAMP 2008 Tariff Guidelines [refer TAMP 2008 Guideline Annexure -III, Para (2)].
- (f). Due to absence of availability of a Coal Terminal at Paradip, PPT and TAMP both agreed to take the reference for General Terms and Conditions (mentioned in tariff order, Para 4.2.ii of TAMP 12/2014-PPT), from EQ-1A terminal of Visakhapatnam Port Trust (VPT) (Order No. TAMP/53/2009/VPT). However, due to erroneous assumptions, in a comparison, the storage charges applied at Paradip Coal Terminal are 940% of the storage charges of EQ-1A Vizag terminal as depicted below, which is a complete violation of Reference Tariff Setting Guidelines of Govt. of India, and Tariff Authorities and Port Trust's own assumptions also, as shown below:

(Rate in Rs. per tonne per day or part thereof)

<b>Commodity</b>	<b>Rate for first 5 days for the balance cargo remaining after free period</b>	<b>Rate for 6<sup>th</sup> day to 10<sup>th</sup> day for the balance cargo</b>	<b>Rate for 11<sup>th</sup> day onwards for the balance cargo</b>
EQ1- A Vizag Port Trust Steam Coal	1.61	3.22	6.44
EQ 1-3 Paradip Port Trust Coal Terminal	15.15	30.28	60.55
<b>Comparison in %</b>	<b>941%</b>	<b>940%</b>	<b>940%</b>

- (g). During fixation of tariff for 30 MTPA Export terminal, TAMP did not conduct any user meetings, and hence users' grievances were not heard and rectified which is required as per the Government of India Tariff Setting Guidelines.
- (h). In TAMP order, while calculating storage and other terminal capacities, it is assumed that 80% of the cargo will be in Cape size and 20% of the cargo in Panamax size of vessel. In reality, the EQ 1-3 berth depth is only 15 Meters, and terminal is not yet Cape Compliant, and all storage yard capacity calculations are not as per the actual infrastructure.
- (i). To derive the storage and terminal capacities, turnaround ratio was considered as high as 30 times instead of 12 times (a norm specified by Government of India) without having any basis, and only to match the 30 MTPA Capacity.
- (vi). Thus, PPT and TAMP have made few erroneous assumptions in Tariff setting and storage parameters. Terminal storage charges specified in TAMP notification are 1000-1500% higher than normal storage charges and the customers will never be able to absorb such huge charges.
- (vii). In such a scenario, the customers will not be willing to absorb such huge costs and hence may not use the terminal at all. Thus, the terminal will not see any cargo moving from day one. This will not only make the state of the art asset a NPA from day one, but will also create serious supply chain challenges as Paradip Port being the major gateway of coal for coastal movement to Southern India. Power Plants in Southern India Coast such as APGENCO & TNEB will be potential major users and dependent entirely on Paradip for movement of coal. Abnormally high storage charges, if applied, will not only increase the already rising cost of power plants but will also jeopardize the economic viability of moving coal through Paradip port, resulting in a loss of revenue to the Paradip Port Trust as well as the state of the art coal terminal, a NPA.

4.2. Thus, the PEQCTL has requested to review and rectify the errors in the Order of February 2014 in a manner and framework within the TAMP Guidelines (as provided in TAMP 2008 Guidelines, Annexure III, Para 2) as given below:

- (i). Annual revenue from Storage should be 1% of the Total Annual Revenue Requirement (ARR) of the terminal.
- (ii). Free Storage Period should be allowed 25 days instead of 10 days.
- (iii). Other operating parameters to be reviewed and corrected as per ground realities.

5.1. A copy of the PEQCTL representation dated 18 July 2020 was forwarded to the Licensor port (PPT) for its comments. In this regard, the PPT vide its letter dated 21 August 2020 has made the following submissions:

- (i). Tariff order for Mechanization of EQ - 1, 2, 3 berths at PPT was notified by TAMP vide Order No. TAMP/12/2014-PPT dated 21 February 2014 under the Reference Tariff Guidelines, 2013. The background facts leading to the adoption of the above is detailed out chronologically in the TAMP Order itself.
- (ii). As regards the storage charges, unit of levy, and free storage period etc., following are the facts:
  - (a). The bids have been invited specifying the applicable tariffs giving reference to TAMP Order No. TAMP/12/2014-PPT dated 21.02.2014. The applicable storage charges, unit of levy, free storage period etc. are stipulated in the said TAMP order.
  - (b). Considering the fact that the above TAMP Order dated 21.02.2014 has been explicitly specified in the bid stage and subsequently reflected in the Concession Agreement, the details relating to storage charges mentioned in Tariff Order shall prevail and be followed.

- (iii). In the light of the facts given above at Sl. No. 2, any changes in the applicable storage charges, unit of levy, free storage period etc. indicated in TAMP order dated 21 February 2014 would be construed as post bid changes beyond the scope of the Concessing Authority for acceptance.

5.2. The said comments of PPT was forwarded to PEQCTL vide our email dated 1 October 2020 for its comments. Subsequently, after a reminder dated 15 October 2020, the PEQCTL vide its email dated 20 October 2020, has made the following submissions:

- (i). That it is evident that an inadvertent error and misrepresentation has happened in storage charges unit of tariff from “Rs Per Ton” to “Rs Per Ton Per Day”, in TAMP 2014 order compared to TAMP 2008 order. We believe that the TAMP has required powers to review and correct the errors, and hence we request TAMP to correct the same.
- (ii). That the errors have inflated the WIP application from 26.15% to 530%, leading to unbearable storage charges.
- (iii). That the TAMP 2014 notification (GN 138) used for bidding is based on TAMP 2008 notification (GN 133), and only 26.15% WPI inflation was supposed to be updated in tariff. Further it is also true that TAMP 2008 notification (GN 133) is based on Guidelines for upfront tariff setting for PPP Projects at Major Port Trusts, 2008 (referred here as “**TAMP 2008 Guidelines**”). Hence TAMP 2008 Guidelines are fully applicable and should be followed for PEQCTL project also.

Referring to TAMP 2008 Guidelines, page 11, Annexure III, which suggests a tariff structure appended as below:

**“1.0 Tariff Structure**

*The tariff structure for services rendered at a mechanized Coal terminal can be grouped under the following three major groups:*

- (1) Coal Handling charges  
 (2) Storage charges  
 (3) Miscellaneous charges

**2.0 Norms for apportionment of total Revenue requirement**

*The total Revenue requirement determined as per these guidelines is apportioned among the aforesaid major tariff groups in the following manner and rates for individual tariff items under each of the groups can be determined.*

<b>Tariff Group</b>	<b>Percentage of total revenue allocated</b>
Coal handling charges*	98
Storage Charges**	1
Miscellaneous Charges	1

*\* The above norms are prescribed on the basis that the coal handling charges is a composite charge comprising of charges for unloading of coal from wagons, storage at the yard for prescribed period and loading on to ship for coal loading terminal and unloading from ship, storage at the yard for prescribed period and loading onto wagons/trucks for coal unloading terminal.*

*\*\* Storage charges is the charges levied for storage of coal at the yard beyond allowable period of 25 days.*

“

It can be concluded that TAMP 2008 Guidelines is main reference point for setting up of tariff for PEQCTL, and same cannot be breached by Paradip Port Trust, TAMP or PPP Operators by way of errors, misunderstanding or whatsoever the reason may be, and before the bidding or after the bidding whatsoever the stage may be. Hence, storage charges charged by any amount over and above 1% of total revenue, if forced by Paradip Port Trust or TAMP order due to errors in bidding documents or any other reason, will not only be a deliberate attempt to breach the

TAMP 2008 Guidelines, but also harm the port users and lead to deliberate curtailment of fundamental rights of natural justice of port users.

PEQCTL commits that if permitted by TAMP order and Paradip Port Trust, it will not charge storage charges from port users anything more than 1% of total revenue, unless otherwise forced by TAMP Order or Paradip Port Trust to charge such tariff.

Hence we request the TAMP Authority to review the storage charges and other applicable clauses, and pass an order restricting the Paradip Port Trust to demand revenue share from PEQCTL based on only 1% of the total Revenue as total storage charges, which it is entitled for. As per the Guidelines, Port Authority does not have any rights to demand revenue share more than 1% as storage charges.

- (iv). That the Port users have already started writing to Tariff Authority and Paradip Port Trust and raising their concerns about the errors and high storage charges at PEQCTL. They will be unable to use the terminal, and these concern will further amplify in coming years, as the capacity constrains at Paradip Port Trust continue to grow.
- (v). That as per TAMP website, Consultative Process *“The endeavor of the Authority is to emphasise user-orientation .....commitment to let the participative process preponderate in its working, special care is taken to give **adequate opportunities for users to represent their interests.....joint-hearings are held at the port level in the interest of **natural justice before the Authority decides individual tariff cases**”.***

The above Consultative Process elaborates the importance of giving opportunities to port users to represent their interests and provide a natural justice. By not hearing the port users voice before the bidding and even after the bidding process, Paradip Port Trust and TAMP will not only harm the port users interest, but also curtail the process of natural justice. It will be a complete breach of participative approach and Consultative Process.

- (vi). That on TAMP website under ‘Processing of a case or proposal’ section, clearly mentioned that the process of proposal to be followed as:
  - (a). *To promote the greatest participation of the greatest number of interested parties.....*
  - (b). *As part of the consultative process it may be necessary to organise either at the Office of the Authority or at the port level hearings.....*
  - (c). *For processing .....Members so authorised in this behalf shall apply **such principles and adopt such approaches as may be notified form time to time by the Authority ensuring adherence to the principles of natural justice.***

During the process of the tariff setting proposal for this project, Paradip Port Trust and TAMP did not completely follow the above processes, leading to the inadvertent errors. In the interest of “Authority ensuring adherence **to the principle of natural justice** “as stated in Para (c), we request authority to give importance to the voice of port users raised during the recent Joint hearing at local Port Trust level and rectify the errors, ensuring the adherence of principle on natural justice.

- (vii). That as per TAMP website, Charter of TAMP states *“His Authority has .....but also the conditionalities governing application of rates”.*

Hence we believe that the TAMP is fully empowered for not only to fix the tariff but also to analyse the conditionalities governing application of the rates, and correct any errors at any stage of the PPP agreement as per conditionality.

- (viii). That referring to TAMP 2013 Guideline para 1.1 *“Moreover, non-major ports have since expanded rapidly ..... accounts for about 40% of the cargo share. In order to provide a level playing field in the Port sector, it has become imperative that competitive market forces may be allowed to play a greater role in determination of tariffs at major Ports. Hence, the Government hereby issues the following directions.”*

From above, it can be easily inferred that TAMP 2013 Guidelines were passed to make Major Ports more competitive, even to compare with non-major ports. But the inadvertent error by way of application of 530% WPI will make PEQCTL not only uncompetitive, but also an NPA

candidate immediately upon start of operations. It will be a great setback for Government of India's intention to make Major Ports competitive.

- (ix). That TAMP Vision statement states *"Vision: Our vision is to move to competitive pricing and to push performance of Indian Ports to Internationally Competitive Levels."* If error continues, and PEQCTL becomes completely uncompetitive, it will be against the vision of the TAMP.
- (x). As per TAMP website 'ROCE and Escalation Factor' section, ROCE permitted for year 2008 to 2014 are as below:

**ROCE & Escalation factor**

<b>Sr. No.</b>	<b>For Tariff Cases decided in the year</b>	<b>ROCE</b>
1.	2018-19	16%
2.	2017-18	16%
3.	2016-17	16%
4.	2014-15	16%
5.	2013-14	16%
6.	2012-13	16%
7.	2011-12	16%
8.	2010-11	16%
9.	2009-10	16%
10.	2008-09	16%
11.	2007-08	16%
12.	2006-07	15%

If PEQCTL continue charging very high storage charges, the ROCE will be much higher than permitted and will lead to legal actions by customers.

- (xi). That the 'Checklist for Reference Tariff under 2013 guidelines' suggests that *"Norms prescribed in the guidelines vis-à-vis deviation, if any, proposed there from along with justification and reasons for each of the deviations made from the prescribed norms."*

The guidelines suggest that in tariff proposals, it is mandatory to propose the justification if any deviation. However, Paradip Port Trust has not clarified or justified the change of unit of tariff for storage from "Rs Per Ton" to Rs Per Ton Per Day" and application of WPI of 530% instead of 26.15%. Also free storage days reduced from 25 to 10 without any justifications.

- (xii). That as per TAMP website Grievance Redressal Process *"TAMP also undertakes review of Tariff Orders for review of errors on the face of records considered and for any other justifiable reason.....on matters relating to port pricing"*.

Hence as an aggrieved party, PEQCTL is within its rights to request TAMP for rectification of errors and TAMP has such powers to rectify the errors.

- (xiii). Accordingly, it is requested to review this matter and rectify the errors in a manner and framework within the TAMP Guidelines (as provided in TAMP 2008 Guidelines, Annexure III, Para 2) as below:

- (a). Annual revenue from Storage should be 1% of the Total Annual Revenue Requirement (ARR) of the terminal.
- (b). Free Storage Period should be allowed 25 days instead of 10 days.
- (c). Other operating parameters should be reviewed and corrected as per ground realities.

6.1. The PEQCTL, while representing to TAMP has also represented to Ministry of Shipping (MOS) on the matter. Accordingly, the MOS vide its letter dated 13 August 2020 requested TAMP to furnish the status of the request made by PEQCTL.

6.2. In this regard, it has been conveyed to the MOS vide email dated 17 August 2020 that based on the comments/ inputs of PPT, necessary action will be taken under intimation to MOS.

6.3. Also, the MOS vide its letter dated 03 September 2020 addressed to PPT and with a copy endorsed to TAMP, has requested PPT to furnish a background note and the point wise comments on the issues raised by PEQCTL.

6.4. In this regard, the PPT was requested vide email dated 10 September 2020 to make available a copy of the letter issued by it to the MOS, on the matter. After a reminder dated 13 October 2020, the PPT vide its email dated 15 October 2020 has forwarded a copy of its response to MOS.

6.5. In the Background Note forwarded by PPT to MOS, the PPT has stated the following:

(i). **Salient features**

- (a). Name of the Project: Mechanization of EQ-1,2,3 berths at Paradip Port on BOT basis.
- (b). Concessionaire: Paradip East Quay Coal Terminal Pvt. Ltd.
- (c). Concession Period: 30 years (14.12.2017-13.12.2047).
- (d). Revenue Share quoted: 31.70%.
- (e). Cargo Commodity: Coal Exports.
- (f). Capacity: 30 MTPA.

(ii). **Applicable Tariffs incorporated in RFP and Concessionaire's Representation**

The RFP bids were invited incorporating the applicable Tariffs in Appendix-12 of the Draft Concession Agreement issued to the bidders given as under.

(a). **Cargo Handling Charges:**

Sr. No.	Commodity	Unit	Rate in Rupees (Rs.)
a.	Thermal Coal	Per Metric Tonne	164.00

(b). **Berth Hire Charges:**

The Berth Hire charges payable by masters/owners/agents for the vessel shall be as per rates below:

Sr. No.	Vessels	Rate per GRT per hour or part thereof (Rs.)	
		Foreign going vessel	Coastal Vessel
1.	All Vessels	0.93	0.56

(c). **Storage Charges:**

The Storage charges for the cargo stored in the stack yard beyond the free period shall be as below:

(Rate in ₹ Per MT per day)

Sr. No.	Commodity	Rate for five days for the balance cargo remaining after the free period	Rate for 6th day to 10th day for the balance cargo	Rate for 11th day onwards for the balance cargo
1.	Thermal Coal	15.14	30.28	60.55

**N.B.:-**

- (i). 10 free days shall be allowed. Free period for export cargo shall commence from the actual date of the receipt of goods in the Port premises. For the purpose of calculation of free period, Custom notified holidays and Terminal's non-working days shall be excluded.
  - (ii). Storage charges shall be payable for all days including Terminal's non- working days and Customs notified holidays for stay of cargo beyond the prescribed free days.
  - (iii). Storage charges on cargo shall not accrue for the period when the terminal operator is not in a position to deliver / ship the cargo when requested by the user due to reasons attributable to the Terminal operator.
- (iii). The Concessionaire's representation is for downward revision of the above storage charges.

6.6. As regard its comments to the MOS on the submissions of PEQCTL, the PPT has reiterated the points, as given by PPT to this Authority on the PEQCTL's representation, as brought out at paragraph 5.1 above.

7.1. In the meanwhile, one of the Users, i.e. Ace Commercial Company Limited (ACCPL) vide its letter 24 August 2020 has pointed out that the storage charges prescribed for the project is very high and not workable and even there is no slab system available thereto to provide relief. The said user has requested TAMP to look into the matter and consider a "Slab System" giving few free days and hike the tariff with higher storage period. It has also indicated that a port users meeting should have been called by TAMP to enable them point out the issue, before notifying reference tariff for the project (TAMP Notification dated 21 February 2014). Likewise, representations have been received from other users viz., Waltair Coal Private Limited, MBG Commodities Private Limited and JSW Energy Limited, representing against the high storage charges approved vide the said Order and the users not being consulted before issue of the Order of February 2014.

7.2. In this regard, it is to state that since the Reference tariff sought by PPT for the coal project was an adoption of the Upfront tariff already fixed after hearing the concerned users and since Reference Tariff Guidelines, 2013 issued by the Ministry of Shipping does not require consultation with the users when a Port Trust proposes to adopt an upfront tariff already approved after consulting the users, no joint hearing was set-up before notifying the Indexed Reference tariff Order dated 21 February 2014.

7.3. As stipulated in Clause 3.8.4 of the Upfront Tariff Guidelines of 2008, TAMP can enquire into wrong application of Scale of Rates. Clause 3.8.5. of the Upfront Tariff Guidelines of 2008 provides that TAMP can decide a question which arises, requiring clarifications or interpretation of the Scale of Rates and the statement of conditions of a private operator.

7.4. In this backdrop and in view of the grievance of the user of not being heard and based on the representation made by few users, it was decided to give an opportunity of hearing to the concerned parties.

8.1 A joint hearing on the case in reference was held on 24 September 2020 through Video Conferencing. The PEQCTL, Users/ User Organisations and PPT have made their submissions at the joint hearing.

8.2 The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and 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>.

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

- (i). Based on a proposal filed by Paradip Port Trust (PPT), this Authority vide its Order no. TAMP/12/2014-PPT dated 21 February 2014 fixed Reference tariff for Mechanization of EQ Berth nos. – 1, 2, 3 at the PPT, based on the stipulations prescribed in the Reference Tariff Guidelines of 2013. The Reference tariff so fixed in February 2014 was after applying an indexation factor of 26.15% over the upfront tariff approved in the year 2008 for the deep draught coal berth, based on the enabling provisions stipulated in Reference Tariff Guidelines of 2013.
- (ii). The PPT has awarded the Project of development of a new Coal terminal on BOT basis to the Paradip East Quay Coal Terminal Private Limited (PEQCTL) and has signed a Concession Agreement (CA) with PEQCTL on 02 May 2016. The PEQCTL has reported that the construction/ mechanization of EQ-1, 2, 3 berths is in full swing and has reported to be approaching towards completion of the project.
- (iii). In this backdrop, the PEQCTL in its representation of July 2020 has pointed out errors in the Reference tariff Order of February 2014 for the deep draught coal berth vide the Order of February 2014 and has thus, requested this Authority to rectify the errors. The PEQCTL has stated that if the errors remain unresolved, it would not be used by any user, and that the entire investment will become a Non-Performing Asset (NPA) immediately. Each of the errors pointed out by PEQCTL and our analysis thereon is discussed in the subsequent paragraphs.
- (iv). Before we begin the analysis, it is to state that the PEQCTL has stated that that during the process of the tariff setting proposal for this project vide the Order dated 21 February 2014, the

PPT and this Authority did not follow the consultative process, thereby leading to the inadvertent errors in the Order of February 2014.

In this regard, it is to state that since the Reference tariff sought by PPT for this coal project was an adoption of the Upfront tariff already fixed after hearing the concerned stakeholders and since Reference Tariff Guidelines, 2013 issued by the Ministry of Shipping did not require consultation with the users when a Port Trust proposes to adopt an upfront tariff already approved after following the consultation process, no joint hearing was set-up before notifying the Indexed Reference tariff Order dated 21 February 2014. It is noteworthy that though the Reference tariff for this project fixed vide Order dated 21 February 2014, formed part of the bid documents, none of the bidders have pointed out any of the 'so-called errors' then.

(v). **Upfront tariff for a 10 MTPA Coal Import Terminal vis-à-vis current project of a 30 MTPA Export Terminal**

(a). Submissions made by PEQCTL:

TAMP notification in 2008 was for a 10 MTPA Coal Import Terminal, while current project is a 30 MTPA Export Terminal. There is a substantial difference between the scale of 30 MTPA and 10 MTPA, and base assumptions are not properly aligned. No feasibility study for evacuation of 30 MTPA was done.

Analysis:

Vide the Upfront tariff Order of July 2008, upfront tariff caps was fixed for coal terminal for an optimal capacity of 10 Million Metric Tonnes Per Annum. Thereafter, when the PPT had wanted a Reference tariff for its Coal berth, it had initially proposed adoption of the upfront tariff fixed in respect of coal handling facility at Visakhapatnam Port Trust (VPT) as a base tariff. Subsequently, while replying to a reference made to PPT on the adoption of the tariff fixed for the project of VPT, the PPT had requested to adopt its own upfront tariff fixed in the case of deep draught coal berth in July 2008 as base, to arrive at the Reference tariff for the Mechanisation of EQ – 1, 2 and 3 berths. Clause 2.2 and 2.4 of the Reference Tariff Guidelines, 2013, requires the port to adopt any upfront tariff as base, only if it represents the project proposed to be developed. Given that the port itself had chosen to adopt its own tariff as base, the Guidelines did not require this Authority and there was no reason for this Authority to delve deep into the details of the project proposed to be developed by PPT. In this connection, this Authority in the Order of February 2014 has recorded that the judgment of the port to adopt its own upfront tariff fixed for thermal coal in the case of the deep draught coal berth to determine the Reference tariff handling thermal coal at the proposed facility, was relied upon. Applying the Reference Tariff approved for 10 MTPA coal import terminal to 30 MTPA coal export terminal was the decision of the PPT.

(vi). **Stacking height and Plot Turnover ratio:**

(a). Submissions made by PEQCTL:

As per the norms given in the guidelines, coal that could be stacked per sq.m of area is 3 tonnes. This factor has been considered by PPT at 4.7 tons in the upfront Order of July 2008. In addition, the plot turnover ratio has been considered as 30 instead of 12, as per the norms given in the guidelines. Such a high average turnaround ratio is not available anywhere in the world or India. No evacuation model or customer feasibility studies was done to arrive at 30 Turnaround ratio. The parameters as given in the guidelines is considered.

(b). Analysis:

In the proposal of PPT, which culminated into the Upfront tariff Order of July 2008, the PPT had considered stacking capacity of 4.7 Metric Tonnes/ sq.mts and a plot turnover ratio as 30. This was in variance to the norm of stacking capacity of 3 Metric Tonnes/ sq.mts and a plot turnover ratio as 12 prescribed in upfront tariff guidelines. Though in the consultation process forming part of the Upfront tariff Order of July 2008, the users/ bidders had raised objection to the deviations stating that it would be detrimental for the developer, the PPT had categorically stated that it is already handling sizeable quantity of thermal and coking coal with a stacking capacity of 4 Metric Tonnes/ sq.mts. for coking coal and a stacking capacity of 5.4 metric tonnes/ sq.m. for thermal coal has been achieved at its own mechanised coal handling plant. Likewise, the PPT had stated

that PPT's own mechanised coal handling plant had achieved a turnover of 21.3. Thus accordingly, the port had considered the mean value of 4.7 metric ton/ sq.m. as the stack height and the plot turnover ratio as 30, based on the specific ground realities and statistical data. Clause 3.2 of the upfront tariff guidelines allows this Authority to make necessary adjustments in the norms prescribed in the guidelines, based on the justification furnished by the concerned Port Trust, keeping in view the port specific conditions.

From the above, it was the conscious decision of the PPT to consider the stacking capacity of 4.7 Metric Tonnes/ sq.mts and a plot turnover ratio as 30 and that there was no error on this aspect. Therefore, there is no merit in the argument put forth by PEQCTL to consider the norms of stacking capacity and plot turnover ratio, as given in the guidelines.

(vii). **Free days:**

(a). Submissions made by PEQCTL:

As per 2008 Tariff Guidelines, free storage days for a coal terminal should be 25 days, and storage charges be applied only after that free period. But in this project, the free storage days provided are only 10 days which violates TAMP 2008 Tariff Guidelines and artificially inflates the storage tariff by 2-3 times. In a recent week cargo inventory at Paradip Port, it indicates a dwell time of 25-30 days with very high plot balance, leading to over ₹ 1000/MT as plot rent.

(b). Analysis:

In the proposal of PPT, which culminated into the Upfront tariff Order of July 2008, the PPT had considered a free period of 10 days, which was in variance to the norm of 25 free days, as stipulated in the upfront tariff guidelines. According to PPT, it was not necessary to allow 25 days free period as stipulated in the norms after the completion of unloading operation, as PPT's own mechanised coal handling plant had achieved a turnover of 21.3. Accordingly, the free period was proposed by PPT at 10 days, taking into account the higher turnover ratio of 30 as proposed by the port. It is noteworthy that 25 days free period as stipulated in the norms is irrespective of whether the coal terminal is export oriented or import oriented. Clause 3.2 of the upfront tariff guidelines allows this Authority to make necessary adjustments in the norms prescribed in the guidelines, based on the justification furnished by the concerned Port Trust, keeping in view the port specific conditions.

In the questions raised by various prospective bidders during the pre-bid meeting (which forms part of the Concession Agreement signed by PPT with PEQCTL), the PPT has in response to some query, has reported that the free period is 10 days, considering the free days prevailing in its then existing coal export terminal.

From the above, it can be seen that it was the conscious decision of the PPT to consider the free period of 10 days. Thus, it is incorrect on the part of PEQCTL to state that the PPT had not given any reasons to consider the free period of 10 days. Therefore, since there was no error on this aspect, there is no merit in the argument put forth by PEQCTL now to consider the free days as per the norm prescribed in the guidelines.

**Nevertheless, it is relevant to state that the rates approved by this Authority are ceiling rates and the operator can charge lower rate. That being so, the PEQCTL has full flexibility to give more free days than the prescribed 10 days.**

**As regards revenue share payable by the PEQCTL to the PPT, it is to state that the MOS vide its letter No. PD-13/1/2018-PPP cell dated 11 July 2018 has prescribed criteria for classification of PPP project as Stressed Project by Major Port Trusts. The said letter also prescribes the mechanism for payment of revenue share when the storage charge is rationalised i.e. when the storage charge is reduced or free period is increased for stressed PPP project. The principle enumerated in the said letter is that the BOT operator shall pay revenue share at the agreed rate as per the Concession Agreement on the actual revenue from storage charge or revenue share calculated on the ARR from the storage**

charge estimated in the original Order after applying applicable annual indexation, whichever is higher. In fact, the MOS in its said letter dated 11 July 2018 has referred to this Authority's letter dated 11 September 2015 wherein this Authority has recommended to the MOS on the similar line in the case of Visakhapatnam Port Trust (VPT) for one of their projects pertaining to high storage charge.

Thus, the PPT and the PEQCTL may, as regards revenue share payment on storage charge, mutually discuss and consider to adopt the mechanism prescribed in the MOS letter dated 11 July 2018 for stressed projects.

(viii). **Mix of Capesize and Panamax vessels:**

(a). Submissions made by PEQCTL:

In TAMP order, while calculating storage and other terminal capacities, it is assumed that 80% of the cargo will be in Cape size and 20% of the cargo in Panamax size of vessel. In reality, the depth of EQ 1, 2 and 3 berths is only 15 Meters, and terminal is not yet Cape compliant i.e. it does not have sufficient draft to handle Cape vessels yet. Thus, the vessel mix of Capesize and Panamax vessels at 80:20 is not correct.

(b). Analysis:

In the Upfront tariff Order of July 2008, upfront tariff caps were fixed by considering the vessel mix of Capesize and Panamax vessels at 80:20 respectively. As brought out earlier, the port itself had chosen to adopt its own tariff as base to arrive at the Reference tariff for the Mechanisation of EQ – 1, 2 and 3 berths and the Guidelines also did not require this Authority and there was no reason for this Authority to delve deep into the details of the facility proposed to be developed by PPT. The tariff is given upfront, even before the project is bid out. In such a scenario, there is no scope now to review the terminal capacity. Therefore, this Authority is not in a position to consider the argument put forth by PEQCTL in this regard.

(ix). **Storage Charges:**

(a). Submissions made by PEQCTL:

TAMP has fixed the tariff for this project by order no. TAMP/12/2014-PPT in which TAMP has applied 26.15% WPI Indexation on tariff notified in 2008. However, TAMP and Port Trust had erroneously added "Per day Per MT" in storage charges instead of "different period groups", which inflated the storage charges by 500% over and above the 26.15% WPI Indexation, without any reasoning and basis. The said error has led to application of inflation twice and cumulative inflation index over 630% for the storage charges. Due to such abnormal storage charges, no customer is willing to sign a cargo handling agreement with us, which is a very alarming situation. The charges specified are unprecedented for storage in the PPP ports anywhere in India and abroad, and have no rationale.

(b). Analysis:

(i). In the Order dated 14 July 2008, which has formed the base for prescription of Reference tariff for the coal berth vide Reference tariff Order dated 21 February 2014, the unit of levy for storage charges for handling coal was prescribed on 'per tonne' basis only. However, while seeking approval for prescription of indexed Reference Tariff based on the July 2008 Order, the PPT had proposed the unit of levy for storage charges on 'per tonne per day' basis, which crept into the Indexed Reference tariff Order dated 21 February 2014, unintentionally.

(ii). The table as given below, brings out this position:

Particulars	Pa	Unit of levy of storage charges	Rate for first five days for the balance cargo remaining after the free	Rate for sixth day to tenth day for the balance	Rate for 11th onwards for the balance cargo

		<b>period</b>	<b>cargo</b>	
Approved vide Order dated 14 July 2008	Rate in ₹ per tonne	12	24	48
Approved vide Order dated 21 February 2014 after applying indexation factor of 26.15%	Rate in ₹ per tonne <b>per day</b>	15.14	30.28	60.55

Thus, in the Order dated February 2014, though the storage charges were prescribed after applying an indexation factor of 26.15% over the storage rates approved vide the July 2008 Order, the unit of levy of storage charges was prescribed on 'per tonne per day basis', instead of 'per tonne' basis. The said error was not noticed by this Authority or by anyone else at the relevant time. It is only when it is about to be implemented, it has come to light.

- (iii). The PEQCTL during the joint hearing has rightly enumerated consequences of such error by an illustrative case, as brought out earlier in this agenda note. As per the indexed storage rate as of the year 2020-21 at ₹ 17.21 per tonne per day, ₹ 34.43 per tonne per day and ₹ 68.86 per tonne per day for the third slab period after the free dwell time of 10 days, based on a day wise cargo consignment of 3350 tonnes per day for 30 days for being shipped on the 31<sup>st</sup> day, the user will have to pay storage charges after availing free storage period of 10 days amounting to ₹ 3.34 crores, when the storage amount is calculated on the basis of "per tonne per day", as against the storage charges of ₹ 62.16 lakhs, when the storage amount is calculated on the basis of "per tonne" basis. Such result was never contemplated by Tariff Guidelines of 2008.
- (iv). Thus, if, the operator is allowed to levy the storage charges on "per tonne per day" basis, an amount of ₹ 3.34 crores would accrue to the operator as per the illustrative example given above; the PPT would also be entitled to receive revenue share on the amount of ₹ 3.34 crores. It will be an unjust return to the operator as well as the Port, at the expense of the port users which cannot be permitted. Terminals are not operated for generating revenue in the form of storage charges.
- (v). Moreover, the apportionment of revenue requirement from storage charges is only 1% of the total 100% revenue requirement to operate the terminal, as per the upfront tariff fixation guidelines of 2008. While fixing the upfront tariff in July 2008, the revenue requirement to the tune of ₹ 131 lakhs towards storage charges was proposed to be recovered by levy of storage charges at the rate of ₹ 12/-, ₹ 24/- and ₹ 48/- per tonne respectively, from levy of storage charges between 11<sup>th</sup> to 15<sup>th</sup> day, 16<sup>th</sup> to 20<sup>th</sup> day and 21<sup>st</sup> & beyond from the cargo that is remain after providing for 10 days free period. However, from the workings furnished by PEQCTL, the PEQCTL has established that by levying the indexed storage charges on per tonne per day basis, it would earn substantially enormous storage income and would end up earning more than the permitted 16% return. The levy of storage charges on per tonne per day basis would lead to the PEQCTL as well as the PPT earning unjust return on capital employed, at the cost of the port users.
- (vi). Since the PPT had invited bids specifying the Order no. TAMP/12/2014-PPT dated 21 February 2014 wherein the unit of levy of storage charges is "per MT per day", the contention of the PPT is that change in the unit of levy of storage charges from "per tonne per day" to "per tonne" would be construed as post bid change. In this regard, the PEQCTL has stated that TAMP 2008 Guidelines is main reference point for setting up of tariff for PEQCTL, and same cannot be breached by PPT, TAMP or PPP Operators by way of errors, misunderstanding or whatsoever the reason is, irrespective of whatsoever the stage it is i.e. before the bidding or after the bidding. It is noteworthy that Order of February 2014 was just an adoption of tariff fixed vide July 2008 Order, after applying the

applicable indexation factor and nothing else and that while prescribing the storage charges, an error has crept in the prescription of unit of levy of storage charges, which needs to be rectified.

- (vii). There can be a view that Clause 2.8 of the upfront tariff setting guidelines of 2008 issued by the Ministry of Shipping (MOS) under Section 111 of the Major Port Trusts Act stipulates that the upfront tariff once determined by this Authority is subject to only indexation during the entire project period of 30 years and do not lend any scope to revise the upfront tariff fixed by this Authority during the project period. In this regard it is to state that in the case in reference, no change whatsoever, is effected to the upfront tariff fixed in the year 2008 and adopted as indexed Reference tariff in the year 2014. Only an anomaly, which had crept in the Reference tariff Order of February 2014 is being rectified. This rectification, in no manner, should be construed as amounting to revision of the upfront/ reference storage charges, approved by this Authority in July 2008/ February 2014.
- (viii). Incidentally, in this connection, it is noteworthy to draw reference to similar matters arising in another Major Port viz., Visakhapatnam Port Trust (VPT) as well as with another operator at PPT viz., JSW Paradip Terminal Private Limited (JPTPL).
  - (a). Incase of VPT, after having the upfront tariff fixed for the West Quay - 6 (WQ-6) Berth in the Northern Arm of inner Harbour of VPT, the VPT awarded the development of the WQ-6 berth to West Quay Multiport Private Limited (WQMPL) on DBFOT basis. Thereafter, the WQMPL approached this Authority for notification of SOR in its name. The SOR was notified in the name of WQMPL. Subsequently, WQMPL filed a Writ Petition No.28595 of 2017 in the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and State of Andhra Pradesh, seeking interference of the Hon'ble Court, interalia, with the prayer to reduce storage charges prescribed in case of WQMPL. The Hon'ble High Court in its Order dated 14 December 2017 directed this Authority to consider and dispose of the WQMPL's representation. In compliance of the Order of the Hon'ble High Court, this Authority, after consultation with the VPT, vide its Order no. TAMP/85/2017-VPT dated 18 May 2018, had considered the representation of the WQMPL and prescribed the storage charges by dividing the earlier notified storage charges by 7 days, so as to prescribe storage charges on per tonne per day basis.
  - (b). Similarly, after having got a Reference tariff fixed for a new iron ore berth to be developed at PPT, the PPT awarded the Project to JPTPL on DBFOT basis. Thereafter, the JPTPL approached this Authority for notification of SOR in its name. While doing so, the JPTPL had made a request to rectify an error in the storage charges as notified in the Reference tariff Order, by prescribing the unit of levy of storage charges as 'Rate in ₹ per ton' instead of 'Rate in ₹ per MT per day'. After following the consultation process, this Authority vide its Order no. TAMP/54/2019-JPTPL dated 20 February 2020 has rectified the error in the prescription of the unit of levy of storage charges, while notifying the SOR in the name of JPTPL.
- (ix). Infact, while disposing of the proposal of JPTPL as stated above, the PPT during the consultation process had stated that prescription of unit of levy as 'per tonne' for the JPTPL project will have ramifications on the PPP projects relating to mechanization of EQ-1, 2, 3 berths at PPT and development of new coal berth to handle coal imports at PPT vide tariff Orders dated 21 February 2014 and 22 January 2017 respectively. However, this Authority while disposing of the proposal of JPTPL as stated above had categorically stated that the said contention of PPT cannot act as a hindrance to rectify error in the prescription of storage charges at JPTPL. If an error has crept in the prescription of storage charges in the tariff Orders dated 21 February 2014 and

22 January 2017, the said error may have to be examined and rectified in consultation with PPT, when the concerned operators approach this Authority on the matter.

- (x). In view of the above position, this Authority is inclined to rectify the error in the unit of levy of storage charges. The rectification can be done in two ways:
- (a). Prescribe the unit of levy of indexed storage charges at '₹ per tonne',
- OR
- (b). Considering that the storage charges are prescribed for a slab of 5 days, the proposed indexed storage charges is divided by 5 and the unit of levy of indexed storage charges is prescribed at '₹ per tonne per day'.

In this regard, given that the storage charges are prescribed on "₹ per tonne per day" basis, across the SOR of all the Major Port Trusts and Private Terminals operating thereat, it is appropriate to prescribe the storage charges on "per tonne per day" basis, as a uniform prescription. The storage schedule contains 3 chargeable slab periods after the free dwell time. Each of first two chargeable slabs have 5 days dwell time. The third slab starts from 11<sup>th</sup> day onwards (after the free period) for an indefinite period. If the cargo continues to stay in the storage yard beyond the first two chargeable slab periods, and if the unit of levy is prescribed as "per tonne", it is likely that the users may continue to occupy the precious port premises for a longer period, given that irrespective of the period for which the cargo stays in the port premises, the users are liable to pay fixed storage charges for the quantity of cargo lying in the port premises. In such an instance, prescription of storage charges on per tonne per day basis, may discourage an user to utilize the port area as Storage yard for longer period and thereby act as a deterrent.

Thus, incase of PEQCTL, this Authority is inclined to prescribe unit of levy for the storage charges on 'per tonne per day' basis, keeping in view the prescription of unit of levy of storage charges in all other major ports and BOT operators operating thereat.

- (x). While responding to the comments of PPT, the PEQCTL has stated that if permitted by this Authority and PPT, it will not charge storage charges from port users anything more than 1% of total revenue, unless otherwise forced by Authority or PPT to charge such tariff. Hence, the PEQCTL has requested this Authority to review the storage charges and other applicable clauses, and pass an order restricting the PPT to demand revenue share from PEQCTL based on only 1% of the total Revenue as total storage charges, which it is entitled for, given that as per the Guidelines, PPT does not have any right to demand revenue share more than 1% as storage charges.

In this connection, as already stated earlier, the MOS vide its letter dated 11 July 2018, while prescribing criteria for classification of PPP project as Stressed Project by Major Port Trusts, also prescribe the mechanism for payment of revenue share when the storage charge is rationalised i.e. when the storage charge is reduced or free period is increased for stressed PPP project. The principle enumerated in the said letter is that the BOT operator shall pay revenue share at the agreed rate as per the Concession Agreement on the actual revenue from storage charge or revenue share calculated on the ARR from the storage charge estimated in the original Order after applying applicable annual indexation, whichever is higher. Thus, as regards revenue share payment on the storage charges, the PPT and the PEQCTL may mutually discuss and consider to adopt the mechanism prescribed in the MOS letter dated 11 July 2018.

10.1. In the result, and for the reasons given above, and based on a collective application of minds, this Authority is inclined to issue a Corrigendum rectifying the error in the prescription of the levy of storage charges. Thus, the storage charges prescribed at Section 2.2 in the Scale of Rates approved vide Order no. TAMP/12/2014-PPT dated 21 February 2014, are replaced with the following:

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(Rate in ₹ per MT per day)

Sl. No.	Commodity	Rate for first 5 days for the balance cargo remaining after the free period	Rate for 6 <sup>th</sup> day to 10 <sup>th</sup> day for the balance cargo	Rate for 11 <sup>th</sup> day onwards for the balance cargo
1.	Thermal Coal	3.03	6.06	12.11

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10.2. The PPT is advised to take note of the above amendment.

**(T.S. Balasubramanian)**  
Member (Finance)

**SUMMARY OF THE ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY.**

<b>F. No. TAMP/12/2014 - PPT</b>	<b>Representation made by Paradip East Quay Coal Terminal (PEQCL) requesting Tariff Authority for Major Ports (TAMP) to rectify the error in the order no. TAMP/12/2014-PPT dated 21 February 2014 for Mechanization of EQ – 1, 2, 3 berths at Paradip Port on BOT basis notified by TAMP vide Gazette No. 138 dated 19 May 2014 .</b>
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The joint hearing on the case in reference was held on 24 September 2020 through Video Conferencing. At the joint hearing, the PEQCTL made a presentation of the proposal. The representatives of PEQCTL, PPT being licensor Port and users/ user organisations were present in the Joint Hearing and have made the following submissions at the joint hearing.

**Paradip East Quay Coal Terminal Private Limited (PEQCTL)**

- (i). Briefly explains the sequence of events from the year 2008 to 2020, discussing about fixing of upfront tariff by TAMP in the year 2008 for Coal Berth to be developed at PPT, fixation of reference tariff by TAMP in the year 2014 for Coal Berth to be developed at PPT by applying indexation of 26.15% over the 2008 tariff, JSW bidding for the project and its intention to commence operations in March 2021.
- (ii). PEQCTL envisages commencement of its operations in March 2021. We, however, have issues with regard to storage and other operating parameters, due to which the port users are not willing to sign any Cargo Handling Agreement with PEQCTL.
  - (a). TAMP notification in 2008 was for a 10 MTPA Coal Import Terminal, while current project is a 30 MTPA Export Terminal. There is a substantial difference between the scale of 30MTPA and 10MTPA, and base assumptions are not properly aligned. No feasibility study for evacuation of 30 MTPA was done.
  - (b). TAMP notification in 2008 prescribed storage charges on 'Per tonne' basis. While indexing the tariff in 2014, TAMP and PPT had erroneously added "Per day Per MT" in storage charges. This has led to applying an indexation factor of 631% instead of the 26.15% WPI Indexation, without any reasoning and basis.

[The JSW refers to a table in this regard in the power point presentation.] Due to such abnormal storage charges, no customer is willing to sign a cargo handling agreement with us, which is a very alarming situation.

- (c). As per 2008 Tariff Guidelines, free storage days for a coal terminal should be 25 days, and storage charges be applied only after that free period. But in this project, the free storage days provided are only 10 days which violates TAMP 2008 Tariff Guidelines and artificially inflates the storage tariff by 2-3 times. In a recent week cargo inventory at Paradip Port, it indicates a dwell time of 25-30

days with very high plot balance, leading to over ₹ 1000/MT as plot rent.

- (d). Also, the plot turnover ratio has been considered as 30 instead of 12, as per the norms given in the guidelines. Such a high average turnaround ratio is not available anywhere in the world or India. No evacuation model or customer feasibility studies was done to arrive at 30 Turnaround ratio.
  - (e). Cargo Turnaround and vessel handling is based on Cape vessels, but PPT does not have sufficient draft to handle Cape vessels yet. The vessel mix of Capesize and Panamax vessels at 80:20 is not correct.
  - (f). A joint hearing was not held by TAMP before passing Order in February 2014.
- (iii). PEQCTL would end up earning more than the permitted 16% return. If 87000 tonnes of cargo is received in piecemeal on different dates, and stay in terminal including free period of 10 days for shipment on 30<sup>th</sup> day, terminal would earn storage charges at ₹. 404 per tonne when the charging basis is per tonne per day; if the charging basis is only per tonne, terminal would earn only ₹. 71 per tonne. [The PEQCTL in its presentation has given an illustration to establish this position.]
- (iv). Revenue requirement is to be segregated into cargo handling, storage charges and miscellaneous charges in the ratio of 98 :1 : 1, as per the Guidelines. However, in the current project, as against the handling rate of ₹ 187/- for cargo, the storage charge is about ₹ 400/- per MT. Thus, out of the total charges, the storages constitute 68% and the handling charges is only 32%, which is in violation of Guidelines.
- (v). Higher storage charges at the port would mean customer shifting and loss of cargo to other competing ports offering lower storage charges. JSW PEQCTPL with fully mechanized state-of-the art infrastructure will be unviable, heading for NPA and port will lose royalty share. Therefore, errors should be corrected as per TAMP Guidelines.
- (As per the presentation made by PEQCTL, the total cost of handling coal at PPT operated mechanized coal handling plant is ₹. 172 per tonne, ₹. 260 per tonne at Dhamra Port and ₹ 193 per tonnes at Vizag, whereas it will be ₹. 587 per tonne at PEQCTL, the major component being storage charges at ₹. 400 per tonne if the basis for levy is per tonne per day.)
- (vi). High escalation in the storage charges leaves the terminal unviable, as the users would not be able to pay the steep storage charges.
- (vii). Many users have also objected about the high storage charges and very less free storage period. While specifying tariff in 2014, TAMP did not conduct this meeting. Hence, users are having grievances which need to be settled.
- (viii). As per Clause 3.8.4 of the Tariff Guidelines of 2008, TAMP can enquire into wrong application of Scale of Rates. Clause 3.8.5 of the Tariff Guidelines of 2008, provides that TAMP can decide a question which arises requiring clarification or interpretations of the Scale of Rates and the statement of

conditions of a private operator. Hence, TAMP is requested rectify the errors in TAMP Notification as given below:

- (a). 25 Days Free Storage Period as per TAMP 2008 Guidelines.
- (b). Annual Apportionment of Revenue in ratio of 99:1
- (c). Rate of unit of Storage charges should be Per Ton as per original TAMP 2008 Order.
- (d). Storage charges should be only 1% of Cargo Handling Charges, as per TAMP 2008 Guidelines.

#### **Paradip Port Trust (PPT)**

- (i). We have given our comments to TAMP regarding storage charges. TAMP can take a call on the matter. We have no other comments to offer. [PPT is silent on the arguments made by PEQCTL backed by its power point presentation.]
- (ii). As regards, vessel mix of Capesize and Panamax vessels, nothing in this regard is indicated in the Licence Agreement entered by PEQCTL with PPT. It flows from the initial Order of TAMP of 2008.  
  
[Member (F), TAMP: Whether the PEQCTL will get traffic, considering the prescribed storage charges?]
- (iii). At this juncture, we have nothing more to say.
- (iv). We are not agreeable to the proposal of PEQCTL.

#### **Ace Commercial Company Limited (ACCL)**

- (i). The storage charges at PEQCTL is very high. It should not be on per MT/ day basis, rather it should be on sq.m/ day basis. Free period is also less. We propose that there should be free storage for 1 month. Thereafter, it can be on slab basis, with each slab of 10 days. This will facilitate shippers to compare costs with reference to existing facility of port at MCHP.
- (ii). Handling charges at PEQCTL is ₹ 186.52 per MT, while at MCHP of port it is ₹ 141/- per MT. There is no scope to add storage charges.

#### **Waltair Coal Private Limited (WCPL)**

- (i). Storage charges at PEQCTL is high and free period is less. Please look into these aspects.

#### **JSW Energy Limited (JEL)**

- (i). Free period at PEQCTL is very less as compared to the Ports on East Coast of India viz., Visakhapatnam, Krishnapatnam etc. Also, storage charges are very high.
- (ii). We want to make use of the facility at PEQCTL. The storage charges may be prescribed on per tonne basis. The free days of 25-30 days may be given. We will enter into agreement with PEQCTL.

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