TARIFF AUTHORITY FOR MAJOR PORTS

NOTIFICATION

No.TAMP/106/99-TPT In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby decides on the proposal of the Tuticorin Port Trust to revise the lease rate for the land leased out to M/s. Southern Petrochemicals Industries Corporation Limited (SPIC) at VOC wharf for installation of Phosphoric Acid storage tanks, as in the Order appended hereto.

SCHEDULE

(Case No.TAMP/106/99-TPT)

| The Tuticorin Port Trust (TPT) | … Applicant |
| M/s. Southern Petrochemicals Industries Corporation Limited (SPIC) | … Respondent |

ORDER

(Passed on this 12th day of May 2000)

This case relates to a proposal received from the Tuticorin Port Trust (TPT) for revision of lease rent for the land leased to M/s. Southern Petrochemicals Industries Corporation Limited (SPIC) at the VOC wharf for installation of Phosphoric Acid storage tanks.

2. Two pieces of land measuring 2325 sq.m. and 1085 sq. m. at the VOC wharf were leased on a long term basis for a period of 30 years by the TPT to M/s. SPIC Limited in April 1979 and January 1981 respectively for installation of Phosphoric Acid storage tanks. Initially the lease rent was fixed at Rs.215 per sq. m. per annum. As per the agreement entered with the lessee, the lease rent is subject to revision with effect from 1 January 1987 and thereafter at the end of every 5 years. Accordingly, the lease rent was revised to Rs.315 per sq. m. per annum from 1 January 1987. The rate was again revised to Rs.444 per sq. m with effect from 1 January 1992. The next revision has been due from 1 January 1997. Accordingly, the port has worked out the revised lease rent as Rs.570/- per
sq. mt. per annum taking into account the subsequent improvement in the VOC wharf. The revised rate was approved by the Port Trust Board in its meeting held on 23 July 1998. The proposal was sent by the Port in August 1998 to the Central Government for its approval. But, the approval was not received from the Ministry as this Authority had been constituted by then.

3. The TPT has clarified that since the TAMP is the Authority for dealing with the Scale of Rates / revision of lease rent, etc., it has now submitted copies of the proposal for revision of lease rent effective from 1 January 97 already sent to the Ministry in August 1998 and requested for our approval of the revised rate retrospectively with effect from 1 January 1997.

4. In accordance with the procedure prescribed, the proposal of the TPT was circulated to M/s. SPIC Limited (SPIC) and to the Tuticorin Chamber of Commerce and Industry (TCCI). Comments received from M/s. SPIC Limited and TCCI are summarised below:

**M/s. SPIC Limited**

SPIC has stated that the proposed revised rate is unwarranted and abnormally high due to the following reasons:

(i). In order to augment the revenue to the Port Trust in the initial period, the SPIC as a prime Customer of port, has agreed to pay a very high rate of Rs.215/- per sq. mtr. in the year 1979.

(ii). Quinquennial revisions were made by increasing the rate of Rs.215/- to Rs.370/- (72%) in 1987, Rs.444/- in 1992 despite the development of port and enhancement in the volume of traffic and consequent higher revenue generation. In spite of sharing of the expenses by more users due to enhanced traffic, the rates continued to flare up ignoring the patronage by the SPIC in the initial period of the port.

(iii). The development works like paving of wharf area, water supply to VOC wharf and development expenses on electricity and communication have not taken place in the land leased to the SPIC. The land maintenance, fencing / pavement, electrical and communication installations have been carried out by the SPIC at its own cost. Hence the increasing the rental rates attributing the above cost is not justifiable.

(iv). The capital cost and development charges have already been recovered by the TPT over the period of years to date by way of land rental. Hence taking a huge value of Rs.2543 lakhs as capital cost of land and development charges is abnormally high.
(v). Applying a commercial rate of 18% on capital cost for ground rent is not at all reasonable. Ground rent already covers all the other expenses and hence additional charges like maintenance and depreciation should not be separately included.

(vi). The wharfage on Phosphoric Acid charged @ Rs.85/- per MT is the highest compared to other ports as well as to other similar liquid cargoes like molasses, furnace oil, EDC, VCM, etc. The port is benefited by way of large quantum of revenue due to the highest rate of wharfage charges for Phosphoric Acid and further hike in any other form despite the benefit due to high volumes is not reasonable.

(vii). Phosphoric fertilisers are presently decontrolled and they are put in a highly competitive situation and the SPIC’s existence is at threat if they are not cost effective. Any increase in their cost and price also affects the farming community in their affordability. The consumption of phosphoric fertilisers has drastically come down due to high price as a result of decontrol of this item which ultimately leads to malnutrition to crops, degeneration in soil fertility and reduction in food production.

(viii). The SPIC initially has contributed heavily by absorbing high tariff rates and continues to contribute to the revisions for which the initial exorbitant tariff was the base, it is the turn of the Port Trust to refrain from further revision.

Tuticorin Chamber of Commerce and Industry (TCCI)

(i). The TPT entered into a contract for 30 years and escalation of rent at the rate of 5% increase every year, leaving a sense of uncertainty after 5 years. The rent was increased from Rs.215/- to Rs.370/- and then to Rs.444/- and is sought to be increased to Rs.570/- per sq. m. The rent is increased as statute levy and not as a contract. The 30 year old contractual period will be a mockery. The agreement becomes void for uncertainty in lease rent.

(ii). No businessman can plan and react what will be the state of rent after 5 years. Though there will be inflation, that cannot be the reason to create a contractual uncertainty. Grade it at 5% increase for the first 5 years and then 7% to 8% and then 11% and put as ceiling at 16% to 18% after 5 years. The affected parties are not heard by the TAMP or by the Port Trust or by the Central Government.
5. The comments received from the SPIC and the TCCI were sent to the TPT by way of feedback information. In their reply, the TPT has stated as under:

(i). The comments offered by the TCCI are based on general and hypothetical grounds, without having reference to the agreement entered between the TPT and the SPIC. The Port Trust can act upon only within the framework of the lease agreement, and the guidelines of the Government of India received from time to time.

(ii). The slabs and percentage system proposed by the TCCI is not acceptable without considering the cost of development, market value of land, expected rate of appreciation, etc.

(iii). The argument of SPIC that in order to augment the revenue to the TPT in the initial period, the SPIC agreed for very high rate of Rs.215/- in the year 1979, is not correct. The rate of Rs.215/- was fixed after taking account the relevant factors and with the approval of competent authority.

(iv). The SPIC has failed to understand the basis on which the lease rate / revision is worked out. The lease rate / revision of lease rate is worked out taking into account the land cost i.e. cost of breakwaters, reclamation etc., as the phosphoric acid tanks stand erected on extremely valuable strip of reclaimed area just 50 m away from the wharf, which is being used for handling bulk cargoes and cost of developments that have taken place during the course of the years, depreciation, etc. This aspect has not been considered by the SPIC. The lease rate is arrived at on unit basis i.e. per sq.mtr. and sharing of the expenses by other users of the port does not arise. The entire expenses towards development of the VOC wharf is not charged on the SPIC alone.

(v). The Port has carried out improvements of the facility such as (a) pavement in wharf area; (b) water supply to VOC wharf; and, (c) development of electricity and communications since 1992. The SPIC is availing these facilities for transportation of the Phosphoric Acid from the storage tanks to their factories. Hence there is nothing wrong in adding the cost of such developmental works, in revising the lease rate.

(vi). The Ground rent has been fixed adopting the rate of 18% on the capital cost (12% interest and 6% return on capital) which is approved by the TAMP. The TPT is carrying out annual maintenance works in the wharf area incurring huge expenditure. Hence the Port
has included a token provision of 3% in the lease rental. Depreciation on various structures is also to be included as per the approved procedure for revision of lease rent.

(vii). The charges towards, wharfage on Phosphoric Acid is for a different service and therefore comparing the rate of wharfage with the lease rate is not relevant.

(viii). The revision of lease rate is made in accordance to the approved principles. Any upward or downward market trend of the commodity produced by the lessee is not to be considered as a relevant factor of revision of lease rental.

(ix). The SPIC has paid only the amounts due to the Port towards the facility / services offered by the Port as per approved tariff, which cannot be considered as contribution to the port.

6. A joint hearing in this case was held at the TPT. During the joint hearing the following arguments were made:

**The Tuticorin Port Trust**

(i). The land leased to the SPIC is at prime location. The value of the land should be much more. This was a historic feature.

(ii). We will be very happy if SPIC moves out to another (cheaper) location.

(iii). The revision was due in 1997. It has not yet been done. Please do it retrospectively.

(iv). ‘Current costing’ of assets has not been done. We have gone by the old (historical) costing.

(v). In fact, we have taken out some cost items to reduce the cost.

(vi). It is too late now to raise a fundamental objection to calculations of cost.

(vii). There has been no increase in traffic and their rent can not be linked to that.

(viii). There is no question of maximum being reached. The costing system may have to change and ‘Current cost’ must be considered.
‘Wharfage’ is handling charge. There is a ‘landing charge’. However, there is no ‘land rent’ component in wharfage. We have already given a concession of wharfage.

If SPIC does not bring Phosphoric Acid at all, there will be no wharfage. Does it mean they will have to pay higher rent?

Due to this storage facility, the SPIC saves on demurrage.

The tank is a bonded area. They can delay payment of Customs Duty and save on delayed cash outflow.

M/s. Southern Petrochemical Industries Corporation Limited (SPIC)

Calculation of Rs.570/- per sq. mtr. for about 97,000 sq. mtr. is not correct. All of these land can be given on lease basis. But actually it is not so. A large area is used as wharf. The Port charges wharfage for that.

20% can be lease. 80% will be wharf. So only 20% of Rs.570/- shall be charged.

Take ‘affordability’ into consideration. We also pay wharfage. Let them give all the lands on lease. We will accept Rs.570/-. We give a minimum guarantee of throughput. The TPT has nothing to lose.

They have reached the maximum rate with Rs.570/-. Will they stop raising the rent for the remaining period?

We are ready to move out if they bear the shifting costs.

We pay separately for use of water / electricity which itself is substantial amount.

Even if the rent can not be reduced, do not atleast increase. Let it stay at Rs.444/-; that is reasonable.

7. With reference to the totality of information collected during the processing of this case and on the basis of a collective application of mind, the following position is seen to emerge:

There is a specific lease agreement between the SPIC and the TPT in respect of the land leased out to set up Phosphoric Acid storage tanks at VOC wharf. The lease deed provides for upward revision of
rent once every five years starting 1 January 1987. The previous revision of lease rent took place w.e.f. 1 January 1992; and, accordingly, the TPT proposed to revise the rent w.e.f. 1 January 1997 i.e. after a lapse of five years from the previous revision. It is noteworthy that the lease deed speaks only about the periodicity of revision of rate and remains silent on the quantum of such revision.

(ii). The SPIC alleges that the proposed increase in lease rent w.e.f. 1.1.1997 is abnormally high. It has further contended that the lease rent fixed at the time of original allotment itself was exorbitant. It is not possible at such a distant date to look into the cost elements, etc. which must have gone into calculation of the base rent fixed in the years 1979 and 1981. Having accepted such rate and paid lease rent accordingly, it is too late for the SPIC to expect review of the initial lease rent at this stage.

(iii). The land in reference is the back up area in VOC wharf. As pointed out by the TPT during the joint hearing, it is at a prime location in the operational area. In the case of other Port Trusts, the rates for such lands in the operational areas allotted for storage of cargo are prescribed in their Scale of Rates. However, the TPT has not included the rate for this land in its Scale of Rates and chosen to revise the rent for this storage area separately. This approach causes difficulties in ascertaining whether the same cost elements have been counted twice in the calculations of wharfage as well as storage area rentals. The TPT has merely stated that wharfage on phosphoric acid is for a different service and comparing the rate of wharfage with lease rate is not relevant. The statement may be true but what is relevant is that the same cost elements considered while fixing wharfage rate should not be counted for calculation of lease rate.

(iv). In the calculation of lease rent, the TPT has considered the cost of construction of break water, wharf wall, roads, etc. and also the capitalized interest during the construction period. It appears that these costs have been taken at original value and not the depreciated value as on 31 December 1997. Similarly, the maintenance charges include maintenance and depreciation on breakwater, wharf, roads, etc. It is quite common to include these costs while fixing wharfage rates. The TPT has not mentioned that these elements were excluded from the wharfage rates. In these circumstances, it is not correct to rely on the cost calculations given by the TPT.
(v). Normally, in most of the lease cases in other ports, in accordance with the Government Guideline on the subject, an annual escalation of 5% on lease rent is allowed. This Authority has approved this approach while passing orders on rates of leases of CPT’s properties at Haldia and also the lands of the VPT (in four zones). This Authority in these cases has also approved revision of the base once in five years.

(vi). In the instant case, however, this Authority is not in a position to allow revision of base for reasons stated in Paragraph 7(iii) and 7(iv) above. However, consistently with the approach adopted by the Authority in other lease cases, annual escalation of 5% over the (then) existing lease rent from the year 1993 is allowed. For the sake of simplicity, a compounded escalation is not considered and a straight increase of 5% for the five year period between 1992 and 1996 is allowed. Accordingly, the lease rent of Rs.444/- per sq.m per annum fixed w.e.f. 1.1.1992 shall be increased by 25% and fixed at Rs.555/- sq.m per annum w.e.f. 1.1.1997.

(vii). The revised rate as specified in paragraph 7(vi) above, shall be subject to a verification of the details in paragraph 7(iv) above and if necessary, a corresponding (retrospective) adjustment of the rate will be considered by this Authority subsequently. This decision is taken by this Authority for the following reasons:

(a). The case need not be held up for the verification, which may take time.

(b). This Authority is not sure whether all relevant details will be easily available for verification.

The above said course of action in this case, will not pose any serious accounting problems, because this is a case involving only one party.

8. In the result, and for the reasons given above, the following decisions are taken:

(i). The lease rent for the land allotted to M/s. SPIC Limited by the TPT is increased by 25% from the existing rate of Rs.444/- per sq. mtr. per annum and fixed at Rs.555/- per sq. mtr. per annum w.e.f.1.1.1997.
(ii). The lease rate approved will be reviewed as mentioned in paragraph 7(vii) above. The TPT is directed to submit the requisite information to this Authority at the earliest.

S.SATHYAM, Chairman

[Advt./III/IV/Exty./143/2000]