Tariff Authority for Major Ports

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 application submitted by the Chennai Container Terminal Limited (CCTL) for a review of this Authority’s Order dated 6 March 2002 on fixing tariffs for container operations at the Chennai Container Terminal as in the Order appended hereto.

(S. Sathyam)
Chairman

The Chennai Container Terminal Limited - - -
Applicant

ORDER

(Passed on this 12th day of August 2002)

This case relates to an application received from the Chennai Container Terminal Limited (CCTL) for a review of the tariffs approved for the CCTL in March 2002.

2. This Authority had passed an Order on 6 March 2002 fixing the tariffs for container operations at the Chennai Container Terminal which was notified in the Gazette of India on 11 March 2002.

3.1. The CCTL has submitted a representation requesting for a review of the tariffs approved in view of the loss incurred during the first three months of the operation.

3.2. The CCTL has made the following main points in its representation with reference to the tariffs approved by this Authority:

(i). The Container Terminal projects of Tuticorin and the Chennai are located in the same State and so it is reasonable to expect a similar cost structure. It is, however, found that the tariffs for
container operations at the Tuticorin Port are on the higher side despite the fact that there is far greater investment at the Chennai Container Terminal.

(ii). It has proposed to include tariff for storage of Hazardous and Over Dimensional containers as the same were not included in the Order under reference. It has proposed that opening and re-packing charges for inspection at US$ 4.0 and Forklift hire charges at US$ 5.0 may also be incorporated under the head stuffing / destuffing charges.

(iii). Based on a comparison of a few tariff items with the PSA SICAL tariffs and the tariffs levied by the CHPT earlier, it has requested to allow the rates as proposed by it for the following items:

(a). **On-board stevedoring tariff**: On-board stevedoring charge is higher at the Tuticorin port inspite of the fact that the CCTL has procured more equipment and incurred large scale investment in repairs to civil infrastructure.

(b). **Reefer monitoring**: The tariff for reefer container is US$ 5.5 per shift for 20’ container at the CCTL as against US$ 7.47 (US$ 2.30 for each plug in/plug out and US$ 5.17 for power supply) prescribed at Tuticorin despite having spent Rs. 8 crores for refurbishment of the reefer yards.

(c). **Stuffing / Destuffing charges**: The tariff approved by the TAMP is only a quarter of what was paid previously for the same service. The tariff paid for CFS operation was Rs.4210/- including the tariff paid to other service providers when the CHPT offered this service. As against this, tariff prescribed at the CCTL is only US$ 8.5 (i.e. Rs.416.50) plus Rs. 600 for delivery forklift which works out to Rs. 1016.50.

(d). **Storage charges**: The CHPT levied storage charges on containers as well as cargo inside the containers. Though the TAMP approved its rationalisation of tariff by removing storage on cargo, it did not approve the corresponding increase in storage charges on containers. This has resulted into a loss of Rs. 12.54 million in the storage revenue in the first three months of operation after considering the lease rentals.
and revenue share paid to the CHPT as per the Concession Agreement (CA).

3.3. The CCTL has also requested to re-examine/review the decisions taken by this Authority on the following main points based on the various arguments put forth by it:

(i). **Royalty to be treated as an expense for fixation of tariff**

(a). Royalty is a genuine cost to the CCTL.

(b). The Government, Ministry of Shipping as well as the Port Trusts have scrutinised the bidding models and the revenue sharing arrangements and found them to be fair and justifiable. The Government has developed the bidding model after taking advice from reputed organisations like the IDFC in this regard.

(c). In all other privatisation projects for example – the NSICT and the PSA SICAL, royalty has been allowed as an expense. This precedent was taken into account while determining the bid value for this project.

(d). The TAMP argued that if royalty were allowed as an expense, theoretically at least, a bidder could bid even 99% of revenue as royalty. This statement disregards the existence of market forces. The ability of the market to bear a royalty of 37.128% has been considered before this royalty was accepted by the CHPT.

(e). With reference to the Kandla tender, the port had included a clause in 1998 stating that the royalty payable to the KPT would be revised upwards or downwards, as a one time measure, in the same proportion as the tariff approved by the TAMP differed from the indicative tariffs provided with the tender documents. This clearly proves that the Government accepts that there is a linkage between royalty and tariff.

(f). Investors will bid very low royalties if it is not considered as an expense. Besides, the low tariffs will mean that private operators will not be in a position to invest adequately in ports. This in turn will mean that Indian Ports will not get the benefit of the state-of-the-art equipment and technology which is one of the objectives of privatisation.
(ii). **Technical Service (TS) Fee may be treated as revenue expenditure**

(a). Technical Service Agreement was signed between the CCTL and the P&O Ports to offer suitable technical service, information and know-how, advice on staffing, training, provide financial procurement and marketing services, etc.

(b). The TSA is a revenue expenditure incurred wholly and exclusively for business purposes and not in the nature of a return to the P & O; and, hence should be allowed as a deduction for the purpose of determining tariffs.

(iii). **Return on Capital Employed (ROCE) similar to that allowed for the major port trusts must be considered for the private terminal operators also instead of allowing Return on Equity.** The ‘Equity’ remains more or less constant throughout the life of the project whereas the ‘Capital Employed’ reflects the correct picture since it takes into consideration new investments and reductions in existing investments.

(iv). **In order to entail expenses like employee liabilities, etc., at the end of the licence period it is necessary to make a provision by way of transferring to a special fund like Development fund reserve to ensure that these liabilities are spread over a large period. If the ROCE is disallowed to private operators, the TAMP should at least allow 20% Return on Equity plus 3% towards Development fund as allowed to the major ports.**

(v). **A port operator has no control whatsoever on the traffic to be handled through the terminal. The operator should not be penalised for building infrastructure for a slightly larger throughput. Thus, the methodology of linking the returns with the capacity utilisation for purpose of tariff determination may be reviewed and a 100% return may be allowed.**

(vi). **A post tax return may be allowed to remove uncertainties from tax regulations as adopted by the Power sector regulators.**

(vii). **The portion of unrealised foreign exchange losses that has been removed from depreciation may be added as it has not been double counted. It has followed the treatment of foreign**
currency transactions as prescribed in Accounting Standard 11 in this regard. The foreign exchange loss will never be directly reported as an expense. It is always added to the cost of fixed asset and depreciated over remaining life as per the relevant accounting standard.

(viii) Some of the assets taken over from the CHPT have no useful life left. Hence, as per correct accounting practices this amount should be written off in the first year itself.

(ix) Preliminary expenses are normally administrative and other incidental cost mostly incurred during the start-up phase. Hence, it is not prudent to continue to have a corresponding value in the years thereafter and to that extent overvalue the miscellaneous assets in the Balance Sheet. The Institute of Chartered Accountants of India (ICAI) recommends that preliminary expense should be written off in 3 to 5 years. Hence, the TAMP should adhere to the Standard Accounting practices prescribed in this regard and accordingly write off the preliminary expenses in five years instead of spreading it over the entire life of the project.

(x) (a) The WDV of the asset at the end of the project life should not be credited since the WDV of the asset and the sale price of the asset will be the same. The depreciated rate used is for the entire life and not till the year of sale. It is not a cash profit as the depreciation for the life of the asset when it is not utilised has not been considered.

(b) It has to incur US$ 1.16 million (which includes employee liability towards gratuity to the extent of US $ 1.0 million) for winding up the operation. Hence, the separation payment of US $ 1 million receivable from the CHPT at the end of the concession period should not be credited back.

4. In accordance with the consultative procedure adopted, the representation of the CCTL was circulated to the CHPT and the concerned port users / representative bodies of port users for their comments. The comments received from them are summarised below:

**Shipping Corporation of India Limited (SCI)**

(i) The various points raised by the CCTL in their representation has already been discussed/deliberated and analysed by the TAMP in its Order after giving due weightage to various points put forth by the operator and port users.
(ii). Accepting any application for revision during the validity period of the Order will not only set a bad precedence; but, will also tantamount to questioning the correctness of the Order. Hence, the review application must be rejected.

(iii). The CCTL shall not compare their tariffs with those applicable at the PSA SICAL as these terminals were privatised under different terms and conditions.

(iv). The P & O ports were fully aware of the condition of the wharf, quay cranes, RTGs, etc., at the time of submitting their bid. The additional cost towards replacement / refurbishment of the same must have been built in the tariff. It will, therefore, be improper to burden the users by way of increase in tariffs towards cost of refurbishment at this stage.

(v). The comparison of tariffs for reefer container between the CCTL and PSA SICAL is not correct. It may be noted that the tariff prescribed for power supply to the reefer points is US$ 5.17 per shift at Tuticorin as compared to US$ 5.5 per 8 hours levied by the CCTL. Even though the CCTL does not charge US$ 2.3 for plug in/plug out, it charges higher rates for power supply on per shift basis.

(vi). Even though tariff for hazardous and over dimensional containers is prescribed at US$ 95.20 for 20’ and USD 190.40 for 40’ container (after allowing 3 free days) in the Scale of Rates, the CHPT never levied the same. These charges are extremely high and out of proportion in comparison with the storage charges for normal containers. The maximum charge for the hazardous container must be 1.25 times and for the over dimensional containers it can be 2 times the normal storage charge for the GP box.

(vii). The CCTL has collected higher storage charge in the month of January 2002 based on the new tariff instead of collecting storage charges as per old tariff. The storage tariff of the CCTL is already higher in certain categories in comparison with other ports. The statement of the CCTL that the new tariff has resulted in loss of revenue from storage charges is, therefore, not tenable.

The Chennai Steamer Agents’ Association (CSAA)
(i). The various points raised by the CCTL have all been discussed in detail in several hearings conducted by the TAMP and also considered them while fixing the tariff for the CCTL.

(ii). None of the points raised by the CCTL in their application merit any review. The CCTL tariff, therefore, need not be reviewed until the expiry of the tariff validity period of 18 months.

**Hindustan Chamber of Commerce (HCC)**

(i). The following fundamental issues need to be addressed for a better understanding of the role of the TAMP as a regulator of the tariff for the major ports:

   (a). There has to be a definite tariff cycle of the TAMP Orders. It is presumed to be two years from the date of notification of the Order in the Gazette of India.

   (b). Can a quasi-judicial authority like the TAMP which is the creation by an act of the Parliament review its own pronouncement?

   (c). If it were to be construed that any order is open for review and revision with no bar of a time cycle, then there will be no sanctity of the orders of the highest body to regulate the tariff for the major ports.

(ii). There will be no end to gazetting and reviews of the orders if the TAMP decides to open a notified order on its own or based on a representation of an aggrieved party. It will not possible for the trade to consolidate their costing under frequently varying tariffs.

(iii). It is not averse to introduce new rates for the ancillary operations or to off set for the increase in the price of diesel which are not in the Order of the TAMP; but, a collective revamping of the tariff will, shake the very fundamentals.

(iv). The CCTL can project specific activities deserving creation of new heads of tariff that will be acceptable to the trade.

(v). The TAMP must direct the CCTL to implement the refund spelt out in the TAMP's Order No. TAMP/73/2001-CHPT dated 22 April 2002.

**The Chennai Custom House Agents’ Association (CCHAA)**
It has reiterated most of the points made by the HCC. In addition to that it has stated the following:

(i). If the TAMP is to take up such revision or review of its own orders which are passed by applying a collective mind of all inputs, it will imply that there is no proper application of mind at the earlier stage or proper inputs have not been furnished at the earlier stage.

(ii). The TAMP had fixed two joint hearings before pronouncing this Order. The validity and sanctity of the highest authority to regulate the tariff of major ports will be defeated under these circumstances.

**Southern India Chamber of Commerce and Industry (SICCI)**

(i). It is surprising that within a few months of its operation the CCTL has made a request for a review/revision of Scale of Rates.

(ii). Any increase in the rates will be detrimental to export as they have already gone through a period of recession during the last year; and, hence there is a need for stability to enable exporters to continue their trade.

(iii). The CCTL was well aware of the various implications at the time of taking over the Container Terminal from the CHPT. It should have worked out the anticipated costs while presenting the data to the TAMP.

(iv). Any increase in tariffs may be considered towards the end of the tariff cycle. By that time, the working of the CCTL and all relevant financial data for the year ending on 31 March 2003 shall be available.

(v). Privatisation was expected to bring in stability apart from lower costs through increased efficiency.

(vi). It is to be considered whether it would be tenable for the TAMP to review its own Order within a gap of two months. Such a review will in fact pave the way for request for further reviews in the future not only in this case but also in many other cases throughout the country and will create a precedence apart from damaging the confidence of export community.

**The Tamil Chamber of Commerce (TCC)**
(i). Before taking over the CFS operation by the CCTL, destuffing of import LCL cargo was being done by the port trust labour gang with port trust forklifts. For destuffing Rs.375/- per TEU was being charged apart from FCL charges of Rs.1155/- per gang per shift.

(ii). The following charges were collected by the CHPT even though not approved by the TAMP before the CCTL took over the operation:

(a). Cranage charge was collected at import CFS for delivery purpose subject to a minimum of Rs.54/- and a maximum of Rs.199/- per tonne. In addition to that Rs.70/- per ton was collected on import application apart for engaging cargo handling departmental mazdoors.

(b). For opening and closing of packages by Customs, the CHPT approved engagement of Cooper gangs by the CHA. The charges were billed on importers by the CHA at actual labour cost and material ranging from Rs.450/- to Rs.900/- per package. Further, for tracing of the cargo Rs.450/- was spend by the CHA per bill of lading. Speed monies were also paid by the CHA and claimed from the importers.

The Container Shipping Lines’ Association (CSLA)

(i). The TAMP Order has been passed after much deliberation and discussions and the basis for each conclusion has been clearly explained in the Order. No major change has taken place.

(ii). Mere bench marking with the PSA SICAL cannot be a reason to ask for tariff increase. Incidentally, the PSA SICAL has tried to justify their rates by comparing with the CCTL thus starting a vicious circle intentionally or unintentionally.

(iii). The TAMP Order clearly stated that there is no further case to review individual tariff items in isolation in the forthcoming hearing. A provision for another review after 18 months is available if the CCTL is able to clearly advise on all individual costing for a comprehensive review.

(iv). It fully supports the views expressed in the TAMP Order about not allowing royalty for tariff fixation purpose. Allowing such costs into tariff calculation will result in an unrealistic tariff.
(v). The CCTL is the only operator at the CHPT. There must certainly be some controls to ensure that their dominant position does not result in rates that will be ultimately be harmful to the trade.

(vi). It agrees with the TAMP stand of not allowing Technical Service (TS) fees as an expense. The contract is awarded to the parent company on the strength of their know how and experience.

(vii). In private enterprise the ‘capital employed’ is corresponded by equity plus long term loans. The loans carry a fixed rate of interest. It is only the equity that represents the commitment from the promoters and the so called risk that the promoter undertakes. It is this risk that shall be rewarded with 20%. It is simply not justifiable for the TAMP to give the port an assured return of 20%.

(viii). The position of the CCTL about 3% return towards development fund is not clear. In case of traditional port, the 3% return allowed towards each of the two reserves i.e.Development fund and Renewal fund is not on the fund amount but, on the capital employed.

(ix). As explained by the TAMP, the employees liabilities at the expiry of the license period and the depreciation on assets are already built into an annual costs and, therefore, does not need creation of a separate fund.

(x). The concept of capacity utilisation is very relevant in the process of tariff fixation. Over capacity must not result in an extra charge for the existing customers. Either the infrastructure must be scaled down or more volumes must be attracted.

(xi). If tax is to be included as an element of cost, the assured return need to be adjusted accordingly.

(xii). The CCTL’s argument is correct as regards unrealised foreign exchange fluctuation. The TAMP is not right in removing that element of depreciation resulting out of the increase in the value of fixed asset due foreign exchange loss.
(xiii). The Accounting Standards do prescribe periods of 3-5 years for writing off the preliminary expenses. This standard is, however, based on the fundamental principle of a ‘going concern’. This is a project with a limited life span; and, hence, the Accounting Standards do not apply directly. The general principle of spreading the cost over the life of the project holds true.

(xiv). Termination payments are predominantly in the nature of severance payments to staff. This cost will be provided over the life of the project; and, an element towards this have already been included in the salary cost. The US$ 1 million is against contingencies.

5. The comments received from the various users were forwarded to the CCTL as feedback information.

6. A joint hearing in this case was held on 18 June 2002 at the CHPT premises. At the joint hearing, following submissions were made:

**Chennai Container Terminal Limited**

(i). The TAMP has been saying that private operators come into ports to make profits and not losses. The fact is the CCTL is not making profits. The tariff order does not enable us to make profits. Therein lies an error in the tariff order.

(ii). Our charge is US$ 39 per box. This is a rock bottom position. We can not make profits with this. We have, therefore, had to go in for cost cutting measures like return of hired equipment, etc.

(iii). Several elements like ‘royalty’, etc., are allowed a ‘pass through’ and not as ‘elements of cost’. This is not acceptable. If this error is not corrected, we may have to consider other serious alternatives.

(iv). The Ministry of Shipping (MOS) did not reply. This could have come in the way of TAMP’s appreciation of our arguments. We have, therefore, given an extract of the bid document of the KPT to show that royalty is integrally linked to tariffs (to be prescribed by the TAMP)

(v). How can the Management costs not be admitted? The P & O provides several services to the CCTL. We use their goodwill to buy equipment at cheaper prices. Users benefit from this. They must be ready, therefore, to pay higher tariffs to gain
access to these benefits. This position is not correctly assessed in the tariff order.

(vi). The TAMP goes by capacity utilisation. The CCTL had no control over the size of the facility. The CHPT gave what it wanted. ‘Capacity’ in this situation becomes a nebulous factor. That cannot, therefore, govern the tariff at all.

(vii). The TCT and the CCTL are similar projects. One is brand new with all new equipment. The other starts with an old operating terminal using old equipment. Our tariff in this situation can not be less than that of TCT.

(viii). ROCE should be the measure and not just equity. The TAMP erred in choosing the latter.

(ix). Income Tax has not been considered. The TAMP has given ‘return before tax’.

(x). Tax holiday is on normal tax. We pay MAT alright.

(xi). We have taken cost cutting measures. We have come back to the TAMP as a last resort.

(xii). Increase in efficiency is reflected by the fact that ‘congestion surcharge’ has been removed after we took over.

(xiii). We are not introducing new cost elements. We are only pleading for our original proposal being fully accepted.

(xiv). Madras High Court also said, “private parties come into such projects for making profits”.

(xv). We had no control over what was given and what was taken over. Even if we could assess the capacity, we could not ensure that it was made over to us.

Chennai Custom House Agents’ Association (CCHAA)

(i). No ‘errors’ have been pointed out. There is no point in highlighting efficiencies of the CCTL.

(ii). For errors apparent, the Authority itself, if it is convinced, can alter its order. Such a provision exists in the I. T. Act also. That the Authority has decided to consult us is a just approach.
Orders can be altered in review for ‘good reasons’. No good reasons have been cited.

MLOs are calling at the CCTL now. How is it relevant for review? How does it alter the position as on the date of the order sought to be reviewed?

Management fee is payable to the parent company. It can never be an element of cost for tariff setting in the CCTL.

ROCE and not ‘equity’ is to be the basis for ‘return’. This point has been adequately dealt with in the order. There is nothing new.

**Chennai Steamer Agents’ Association (CSAA)**

When the CCTL took over the terminal, they knew what they were taking over. How can they today talk about, ‘capacity’, ‘dimensions’, etc., not being in their control, therefore, not being relevant.

A return of 20%, after reckoning with all expenditure, is quite adequate. In any case, it is too early to review it.

**The Container Shipping Lines Association (CSLA)**

The CCTL talks of ‘serious alternatives’. We feel, the CCTL should seriously consider cost reduction.

MLO calling is excellent; but, in the case of small vessels, their capacity utilised is only 33%; and, 90% of that is still for transhipment to Singapore.

While comparing with the TCT look at the volumes also. The TCT does half the volume of the CCTL traffic.

‘ROCE’ is not correct. ‘Equity’ is the correct criterion. Cost of international debt is very low i.e. 4% to 6%. Why should such debt get a higher return?

Repairs to wharf, etc., is not a new item. They must have noticed at the time of inspection before take over.

Cost of a fixed life project must be spread over the project period.

The ‘return’ actually allowed is much more than 20%. It is some where near 40%.
There are no apparent mistakes. Fundamental assumptions have not changed. There is no case at all for review.

The CCTL’s costs are not transparent.

**Tamil Chamber of Commerce and Industry (TCCI)**

The CCTL provides special services. They have not been admitted into the costing. There is scope for an increase in tariff.

**Shipping Corporation of India (SCI)**

Facts and figures about the terminal were well known. The CCTL took over an operating terminal; it was not a new terminal. There is, therefore no case for review.

**Hindustan Chamber of Commerce (HCC)**

(i). There has to be some sanctity about tariff orders. They can not be lightly interfered with.

(ii). No new issue has been raised.

(iii). There is no provision for review. The TAMP can not, therefore, review. Provisions of I. T. Act are not relevant here.

(iv). There is no labour element in the CCTL. They do not have to reckon with notional gangs, unions, etc.

(v). DGPs is not a system unique to India introduced by the CCTL. The Konkan Railway system already has a similar ‘collision warning system’.

**Chennai Port Stevedores Association (CPSA)**

Policy of privatisation was to benefit the public of India. In other words, public interest should prevail over private interest. The Madras High Court also has said so.

**Madras Chamber of Commerce and Industry (MCCI)**

(i). There is no case for review. All issues were considered earlier also.

(ii). The tariff given already is adequate. Any further increase will be unacceptable.
(iii). The CCTL must cut costs and improve efficiency to make profits.

(iv). Issues like ‘royalty’, ‘management fee’, etc., are internal in nature.

(v). We endorse the views expressed by the HCCI.

(vi). There was no open tender. It was a case of limited tender from identified parties. The P&O came in because of their standing. That being so, there can be no case for charging a management fee.

**Southern India Chamber of Commerce and Industry (SICCI)**

(i). We have given a memorandum. Please take into account the points made therein.

(ii). Only 2 months ago the tariff was set. How can there be a revision so soon? The trade is shocked.

(iii). Privatisation is not just for price stability; but, more for price reduction.

**Indian National Shipowners Association (INSA)**

Capacity of terminal, crane clearance, etc., the CCTL should have known. They can not say they entered the scene without knowing what they were taking over.

**The Chennai Port Trust (CHPT)**

(i). In the volume of traffic does not increase our income through royalty may decline. We should get at least what we were getting when we operated the terminal.

(ii). Royalty and land lease charges are not negotiable now. At least, the CHPT is not competent to talk about it.

(iii). As regards the TAMP’s order about refund of ‘demmurage’, we will examine.

(iv). ‘Return’ is fixed with respect to capacity utilisation. If we do more, we do not benefit. But, if we do less we suffer. This is not fair.

(v). On the ‘escrow account’ we have some definite views. We will give a separate note.
7.1. As agreed at the joint hearing, the CHPT has made further submissions in response to this Authority’s Order about starting an ‘escrow account’. These submissions have been made in response to various queries raised by this Authority in the general revision case relating to the CHPT. The written submission made by the CHPT will, therefore, be analysed in that case.

7.2. At the joint hearing, the CHPT had also agreed to re-examine the demurrage cases involving repayment of royalty money to the CCTL for enabling (full) refund to the users concerned. The CHPT has, however, not sent any written submission in this regard.

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

(i). Some users, particularly the HCC have questioned the competence of this Authority to entertain requests for ‘reviews’ of its Orders. It is relevant in this context to recognise that, admittedly, the Statute does not empower this Authority to review its Orders. This legal issue has been dealt with by this Authority in many earlier cases. In the absence of any provision for an appeal against its Orders, with the intention of providing an opportunity to redress genuine grievances without having to take recourse to costly and time-consuming litigations in courts of law, this Authority has deliberately decided to entertain such requests for ‘reviews’ even in the absence of such a specific provision therefor in the Statute. In this backdrop, this initiative can be seen not as an arrogation to itself of an unintended power but, as extension of application of the principles of natural justice. This is something that is being done in the interest of the parties to the proceedings.

Significantly, in an earlier case a leading Senior Counsel, who appeared at the joint hearing on behalf of a Port user, had observed that, bearing in mind the laudable objective behind the said initiative of this Authority, it should not be allowed to be lightly questioned by any party on mere technical grounds; the spirit behind the action must be allowed to prevail. If such an initiative were to be challenged by any one merely on technicalities, this Authority may have to deviate from its general stand of not pleading before the court in any case on merits and will have to take a stand to appeal to the good sense of the court concerned to maintain the spirit of the arrangement overriding the technical infirmity.
(ii). This case appears to have caused a lot of flutter among the users as they have understood this to be an exercise for a revision of the rates earlier ordered. It is, therefore, necessary to clarify the correct position.

This Authority has prescribed a two year tariff cycle. In the CCTL case, however, for stated reasons, the tariff validity cycle has been set as 18 months. Ordinarily, a Scale of Rates is taken up for review leading towards revision only at the end of the tariff validity cycle. But, ahead-of-schedule reviews are also taken up if extraordinary circumstances warrant such consideration.

There are also cases of ‘legal reviews’. Such reviews are undertaken if the parties are able to point out (factual) errors apparent on the face of record resulting in miscarriage of justice. The representation of the CCTL falls in the category of legal review. In other words, the CCTL has alleged errors apparent on face of the record causing them injustice. Such a petition cannot be refused consideration. If errors are established, in the interest of justice, they will have to be corrected. At the same time, there will be no interference with the Order already passed, if no errors are established. That being so, there is no need for the users to have any apprehension that the rates already prescribed will be lightly dealt with because of admission for consideration of the CCTL representation.

(iii). The CCHAA has pointed out that this Authority itself, if it is convinced, can alter its Order for errors apparent. It will be relevant to mention here that this Authority does not wish to accept or reject the representation only on the strength of the averment made by the CCTL. In line with the general consultation process followed in all tariff cases, it was decided to adopt a liberal approach in this case also by getting inputs from all concerned before deciding the case on merits.

(iv). The CCTL has made an exhaustive comparison of the tariffs approved for the CCTL vis-à-vis the tariffs at the PSA SICAL. This Authority has clarified in many of its Orders that norms, principles, concepts and approaches adopted in tariff setting can be the same across different ports/terminals; but, the rates can (and, need) not be. Level of tariffs at one port/terminal cannot automatically warrant fixing tariffs at the same level in another port/terminal. The fact that
two such terminals are situated within the same State cannot be a reason for prescribing the same level of tariffs at both the places. Incidentally, there are instances of this Authority prescribing differential tariffs for two container terminals situated even within the same port. The observation of the CSLA about differences in volume of traffic handled at the CCTL and the PSA SICAL is very relevant; and, as a matter of fact, volumes affect the unit rate due to distribution of fixed costs.

(v). (a) The overall cost approach adopted for prescribing the tariffs at the CCTL has been explained in detail in the impugned Order of this Authority. Even though the overall cost position depicted a ‘surplus’ at the (then) existing CHPT tariff levels, a 10% increase was allowed in favour of the CCTL for stated reasons.

(b) The CCTL has now highlighted some of the tariff items for review stating that the costs of corresponding services provided are higher than the tariff approved. It is noteworthy that the CCTL was requested to furnish activity-wise costing when its tariff proposal was under examination. Since such costing details could not be furnished, the overall position for the terminal as a whole was considered. It has been clearly indicated in the impugned Order that individual tariff items may not match with the cost of providing relevant services. It has already been explained in the Order that a cost deficit, if any, under one of the components of services is made good by surplus available in some other components in view of the overall cost approach adopted. In this backdrop, it is meaningless to review in isolation only some of the tariff items with reference to ‘cost’ where the CCTL is reportedly incurring loss.

(c) While explaining the reasons for proceeding to process the case without insisting on activity-wise costing details from the CCTL, this Authority has also advised the CCTL to draw up its proposal supported by costing details for individual activities at the time of the next general revision/review of tariffs. Recognising the recent commencement of operation by the CCTL and non-availability of reliable data (for it) to work out costing of different services, a specific proposition of reduction in tariff validity cycle was considered at the second joint
hearing held. It was primarily the CCTL which strongly argued for a two year tariff validity cycle. Notwithstanding this position, if the CCTL furnishes reliable activity-wise costing for all the services, this Authority can take up such proposal for considering readjustment of tariffs. It has to be recognised that such consideration will have to be de novo and cannot be a part of a review proceeding.

(vi). The CCTL has now proposed to introduce new tariffs for forklift charges, inspection charges, etc., and storage charges on hazardous and over-dimensional containers. These are all new tariff items which did not find place in the CCTL’s proposal already disposed of; hence it cannot be treated as an omission on the part of this Authority requiring a review now. It has to be clearly understood in this connection that, in review cases, no new facts can be introduced for consideration; errors will have to be pointed out strictly with reference to the facts as they obtained on the face of the record on the date of the Order in dispute. Inclusion of these (new) charges in the Scale of Rates of the CCTL can, however, be taken up for consideration, if a separate tariff proposal relating to these items with complete justification is filed.

(vii). (a). The issue relating to admissibility of ‘revenue share’ has been dealt with elaborately in the impugned Order; and, adequate opportunity to all concerned was given to express their views before this Authority decided on this issue. The arguments made by the CCTL now are more or less a repetition of its views already expressed in the proceedings that resulted in the impugned Order.

(b). The example of the Kandla Port Trust, cited by the CCTL, appears to be irrelevant since the model which was under consideration in the KPT case was for levy of royalty with a condition for minimum guarantee throughput. The model adopted at the CCTL is one of revenue sharing.

(c). Interestingly, the CCTL has claimed that the percentage of revenue share has been determined based on the ‘ability of the market to bear’. Even though this is not a relevant factor for review of the impugned Order, this statement goes only to reinforce the observation of this
Authority made in the impugned Order that ‘the CCTL has proposed to fund its commitment to the CHPT from recoveries to be borne by the users.

(viii). The issues relating to admissibility of Technical Service Fee, return on investment model adopted, taxation, unrealised foreign exchange rate variation, etc., agitated now by the CCTL have already been considered by this Authority in detail as a part of the review petition filed by the NSICT. In that case all the private terminal operators, the CCTL included, were consulted. The Order passed in that case confirms the model adopted in the case of determining of tariffs at the private terminals. That being so, it is reasonable to presume that the CCTL was aware of the approach adopted by this Authority on the issues in reference well before its tariff application was filed/decided. While processing the CCTL tariff proposal also sufficient indications in advance were given about applying to the CCTL case also the approach adopted uniformly for the private terminals. In this backdrop, raising these issues repeatedly can not be a ground for reviewing the decisions taken.

(ix). (a). Linkage of capacity-utilisation with return on the investment made to create such capacities is not an approach specifically devised to be adopted in the CCTL case only. This is the general approach adopted in the case of Major Port Trusts and private terminals; and, no extraordinary circumstances have been found to emerge in the CCTL case to deviate from the general approach.

(b). It appears that claims of facilities operating beyond their rated capacity is fallacious. Such claims will require a close scrutiny of the working procedure adopted in conformity with relevant laws and/or the method adopted to estimate the rated capacity.

(c). The CCTL has now argued that it has no control over the facility inherited from the CHPT. Recognising this factor, the capacity of the terminal has been estimated with reference to the productivity levels relevant to the CHPT operation. It is needless to mention, as claimed by the CCTL itself, that the productivity levels of the CCTL operation have already exceeded the levels achieved under the CHPT operation.
(x). The costing exercise carried out was for computation of tariffs. For stated reasons, preliminary expenses, upfront payments and terminal payments have been spread over the life of the project. It is noteworthy that this Authority has not advised the CCTL to maintain its accounts in that fashion. While Accounting Standards may be relevant for maintaining financial accounts and for making financial disclosures under any relevant Statute, the principle adopted by this Authority will be relevant only to tariff setting. It will not be correct to say that Accounting Standards prescribed must always guide the method adopted by this Authority for computation of tariffs.

(xi). (a). When preliminary expenses incurred by the CCTL during the start-up phase are considered for tariff determination, it is logical that termination payment to be received by the CCTL at the end of project life, which is nothing but cash-inflow, is also considered for computation of tariffs.

(b). The CCTL’s contention that this Authority has considered the book value of the asset as nil at the end of the project life is not correct. In the absence of estimates of re-sale value of the equipment at the end of the project life, the Written Down Value (WDV) of the assets at the end of thirtieth year has been considered as the compensation to be received by the CCTL from the CHPT. When capital cost and depreciation of equipment are considered for tariff computation, it is appropriate to consider also cash inflows arising out of disposal of the assets in reference.

(c). The CCTL has argued that employee liability (for Gratuity purposes) to be payable at the time of termination must also be recognised. The employee cost estimates furnished by the CCTL in the cost statements, which were accepted in toto, contain a provision of 30% towards staff welfare which, inter alia, accounts for 12% toward a Provident Fund and 2.5% towards a Gratuity Fund. There appears no reason, therefore, to provide again for terminal payments to the employees at the end of the project life.

(xii). As has been pointed out earlier, a review can be undertaken only with reference to errors apparent on the face of the
A ‘review' route cannot be taken to require this Authority to modify its decision already taken which may not be acceptable to any of the parties to the concerned proceeding or to require this Authority to accept a totally new approach to tariff setting. In such cases, if the aggrieved party is not satisfied with the approach adopted by this Authority, it has to approach other appropriate forums for redressal of its grievances. In the light of the analysis given above, it is clear that the CCTL has not established any error apparent on the face of the record warranting a review of the Order dated 6 March 2002.

9. In the result, and for the reasons given above, and based on a collective application of mind, this Authority concludes that the CCTL has totally failed to establish any error apparent on the face of the record warranting a review of the impugned Order. Accordingly, its application for a review of this Authority’s Order dated 6 March 2002 is rejected.

( S. Sathyam )
Chairman

[ List of Ports | List of Orders]