No. 80 New Delhi, the, 17 April 2002

TARIFF AUTHORITY FOR MAJOR PORTS

NOTIFICATION

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 disposes of the representation of M/s. East India Petroleum Limited for a review of its earlier Order dated 29 October 99 fixing lease rent in respect of four zones (II/A3, II/B, IV/A, IX/B) of the Visakhapatnam Port Trust lands as in the Order appended hereto.

(S. Sathyam)

Chairman

Case No.TAMP/3/98-VPT

M/s. East India Petroleum Limited - - - Applicant

Vs

The Visakhapatnam Port Trust - - - Respondent

ORDER

(Passed on this 8th day of April 2002)
This Authority had vide its Order dated 29 October 1999 fixed the annual lease rent in respect of different zones of the Visakhapatnam Port Trust (VPT) lands. The Order was notified in the Gazette of India on 24 November 1999. In the Order while specific rent per acre per annum for different zones was approved, the approved rates are shown against the concerned lessees. The Order also states that in case of corridors, the charge will be based on different rates of different zones concerned on a pro-rata basis.

2.1. With reference to the above Order of this Authority, M/s. East India Petroleum Limited (EIPL) has submitted a representation to review the lease rent in respect of four zones of the VPT land.

2.2. The EIPL has made the following points in its representation:

(i). The VPT has allotted 1.56 acres of land in zones IIA, IIB and IXB on 14 February 1997 for handling POL products and LPG at the inner harbour for a period of 30 years.

The VPT has raised the final bill by applying the rate as per clause 6.1(i) of the TAMP Order notified on 24 November 1999, wherein the rate for the EIPL for laying pipeline is mentioned as Rs.47,044.80 per acre per annum. The application of this rate is in disharmony with clause 6.2 of the same Order, which clearly states that in case of corridors, the charge will be based on the different rates of different zones concerned on pro-rata basis.

(ii). Another land ad-measuring 0.83 acre in zones II/B, IIA, III/B and III/B(2) was subsequently taken on lease on 29 November 2000 for handling LPG. This corridor for LPG was necessitated by the specific requirements of the VPT to shift the operations to the outer harbour.

The VPT has fixed the lease rentals at Rs.78,055 per acre and finally revised to Rs.4,56,238 per acre stating them to be the commercial rates leviable as per the agreement.

The rent in this case is to be considered at the similar rate fixed in respect of the original pipeline corridor at Rs. 38,890 per acre, as the purpose being the same the new pipeline corridor was taken for the convenience of the VPT.
2.3. In this backdrop, the EIPL has requested this Authority to review the matter and give necessary directions to remove the anomaly.

3.1. The representation of the EIPL was registered as a review case and in accordance with the procedure prescribed, a copy of the representation was forwarded to various concerned port users/representative bodies of port users and the VPT for comments. The comments received are summarised below:

Visakhapatnam Port Trust (VPT)

(i). Land to an extent of 1.56 acres situated in 3 different zones was leased to the EIPL for laying 2 Nos. of pipelines from Oil Wharf area to their Terminals located in Eximpark area subject to payment of lease rentals at the rate fixed by the TAMP and other usual conditions of the lease.

(ii). Another land measuring 0.83 acre situated in 4 different zones was also subsequently leased to the EIPL for laying LPG pipeline from the HPCL testing centre at the Malkapuram area to their Terminals at Eximpark area for the period from 29 November 2000 upto 14 September 2025 (to make it co-terminus with the main lease of 50 acre of land) subject to payment of lease rent at the commercial rates.

(iii). The EIPL has accepted the conditions for payment of lease rentals; and, executed the lease agreements in regard. Accordingly the rent was claimed at the provisional rates pending finalisation of lease rentals both by the TAMP and the District Revenue Authority (DRA) in respect of 1.56 acres and 0.83 acres of land respectively.

(iv). Plot of land of 0.83 acres was offered to the EIPL with a specific condition of charging rentals at the commercial rate as per the revised policy guidelines on land management issued by the Government on 1 April 1995. The basic value in respect of 0.83 acres of land fixed by the DRA was received on 6 December 2000 based on which the lease rentals are claimed. The rentals in respect of this land cannot be reduced at par with the rates fixed for the pipeline corridor allotted to them in 1997 for the stated reasons.

(v). The EIPL has approached for grant of lease of 0.83 acre for laying new pipelines at its own instance and not for the convenience of the VPT. As per condition no.18 of the allotment order dated 17 December 1996 in respect of 1.56 acres of land, the Port reserves the right to withdraw the
lease at any time earlier than 30 years, once the lessee establishes linkage with the HPCL as soon as the HPCL lay their pipelines from Outer Harbour LPG Jetty to the Eximpark.

M/s. Indo-Flame Petrochemical Limited (IFPL)

(i). We have been allotted the land but the possession was not given to us even after the deposit of necessary amount. Several letters have been written to the VPT/HPCL for the pipeline tie-up facility (like other ports) for maximum production in the interest of the country.

M/s. Bharat Petroleum Corporation Limited (BPCL)

We have similar views as that of the EIPL on the subject; and, our further comments in respect of the land allotted to us by the VPT are as follows:

(i). Land admeasuring 3 acres (0.9136 acres in Zone IIB & 2.0864 acres in Zone IXB) was taken on lease for the purpose of laying pipeline corridor for a period of 30 years vide agreement dated 6 June 1997.

(ii). As per clause 6.2 of the Order of the TAMP notified on 24 November 1999, the rentals are to be calculated at different rates of different zones concerned on a pro-rata basis. The VPT has, however, raised a bill dated 29 March 2001 by applying the rate of rentals as Rs.70,798.31 per acre per annum for the period from 1 April 2001 to 5 June 2001 and Rs.74338.23 per acre per annum for the period from 6 June 2001 to 31 March 2002 for both the zones whereas the two sites are situated in different zones.


3.3. A copy each of the comments received from the users was sent to the VPT and the EIPL as feedback information.
4.1. A joint hearing in this case was held on 6 February 2002 at the VPT premises. At the joint hearing, the following submissions were made:

M/s. East India Petroleum Limited (EIPL)

(i). We have given two documents for the two corridors we have. Please take our submissions into account and give us relief.

(ii). Our corridors pass through the zones II(A), II(B), and IX(B). In spite of a specific statement in the TAMP’s Order that “in case of corridors, the charge will be based on the different rates of different zones concerned on a ‘pro rata’ basis”, we have been charged the maximum rate available. This mistake may please be corrected.

(iii). (a). In one of the two corridors, we are one of many users. Why should every user be charged the full rate? Here, again, there must be some reasonable apportionment.

(b). For this corridor, commercial rates have been applied. According to us, this is not correct. Rs.4.56 lakhs per acre is an abnormally high rate. In any case, how can the DRA prescribe such a rate for the VPT; this must be done by the TAMP.

Visakhapatnam Port Trust (VPT)

(i). The position relating to way leave charges for the pipelines is well settled. We have not deviated from the settled position.

(ii). It is not correct that the over-ground on the corridor is available for free and full use by the port. There are restrictions in view of the pipeline below.

(iii). The additional corridor was taken at their discretion for connecting with the HPCL pipeline. It is not factually correct that they had to do so under our insistence.
(iv). We agree with the EIPL contention that charges shall be levied on a pro rata basis with references to the zonal rates. The TAMP may notify rates for zones and not for lessees.

(v). We also agree with the EIPL contention that there has been a mistake in adopting the rates proposed by the DRA without TAMP’s approval. Wherever such rates have been applied, we will now submit appropriate proposals for consideration and ratification by the TAMP.

Visakhapatnam Chamber of Commerce and Industry (VCCI)

(i). The Government Guidelines, followed by the TAMP until formulation of its own Guidelines, provides for a quinquennial revision of the ‘base rate’. Taking advantage of this provision, the VPT has been ordering substantial increases in lease rentals in consultation with the DRA. In our view, this is not correct. In cases of long leases, such mid-course escalations completely demolish viability of projects; it is not possible for entrepreneurs to anticipate all such changes and build such elements into the project costing at the outset. The TAMP must correct this position.

4.2. At the joint hearing, the EIPL submitted two documents relating to the two corridors of land allotted to it furnishing factual position and other details in respect of them.

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

(i). The Order passed by this Authority on 29 October 2002 clearly states that in case of corridors, the charges will be based on different rates of different zones concerned on a pro rata basis. The same Order, however, approves definite rates for some of the users whose lands fall under different zones.

(ii). It is relevant to mention here that the (revised) rates approved were based on the proposal of the VPT. The VPT had proposed to apply the highest lease rent uniformly for the whole corridor wherever a particular corridor fell in more than one zone. This proposal was not approved by this Authority and it was ordered to apply the applicable rates for different zones concerned on a pro rata basis. Even though this decision was taken, the rates for individual lessees were notified based on the highest lease rent of the different zones. This is undoubtedly a mistake since the rates prescribed contradict the principle set in the same Order. This mistake has occurred in the cases of the corridors allotted to the HPCL (Zones IV/A and IX/A), the BPCL (Zones II/B and IX/B), and the EIPL (Zones II/B, II/A(3), and Zone IX/B).
(iii). Even though the error is confined to some of the lessees, it is desirable to revise the entire rate schedule approved. In any case, this Authority is not concerned about lease rentals in individual cases. It will prescribe the lease rentals for different zones. It is for the port trust to charge the applicable rates in the individual leases granted by it.

It is noteworthy that the VPT has also agreed that the rentals must be levied on a pro rata basis and requested this Authority to notify rates for different zones and not for individual lessees.

(iv). In order to rectify the error, this Authority now decides to modify paragraph 6.1(i) of its earlier Order dated 29 October 99 by specifying the rates for individual zones as proposed by the VPT based on the recommendations of the Rate Fixation Committee. It is noteworthy that this Authority had already approved the rates for individual zones proposed by the VPT.

Since the amendment is being made for rectification of an error, the modified provision has to be given effect retrospectively from the date of implementation of the revised rates approved in this Authority’s impugned Order.

(v). The EIPL has raised some issues relating to pipeline corridors. As has been pointed out by the VPT, the issue relating to fixing lease rent of way leave cases for underground cross-country pipelines has already been settled by this Authority vide its Order dated 15 March 2000. In such cases, it has been decided that no concession in lease rent need be granted. There does not appear any valid ground requiring a review of this decision.

(vi). The second component of the EIPL representation relates to the reasonableness of lease rental fixed by the VPT for the second allotment of 0.83 acres of land. The VPT has pointed out that the lease rental was fixed by it by obtaining the current market value of comparable lands from the DRA. It has also admitted its mistake in adopting the rates obtained from the DRA without the approval of this Authority.

The issue relating to the approach so far adopted by the VPT in fixing lease rentals with reference to the valuation obtained from the DRA has already been analysed in detail and decided by this Authority in its Order dated 21 March 2002 in the case relating to a representation made by the Andhra Petrochemicals Limited. In that case, it was held that the VPT should obtain the approval of this Authority for lease rentals for different zones of its land before their inclusion in its Scale of Rates; and, only such approved rates should be applied in both new leases and revision of base rates.
in existing leases. The decision already taken equally applies in the case of the EIPL allotment also. This Authority, therefore, directs the VPT to obtain its approval to the Scale of Rates for the port lands; and, apply only such approved rates in leases granted.

6. In the result, and for the reasons given above, and based on a collective application of mind, this Authority decides as follows:

(i). Paragraph 6.1.(i) of this Authority’s Order dated 29 October 1999 is modified as follows:

“6.1.(i) The proposal of the VPT for revision of lease rent is approved as detailed in the tabular statement below:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Zone</th>
<th>Revised rates of rent per acre per annum (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>II/A(3)</td>
<td>47,044.80</td>
</tr>
<tr>
<td>2</td>
<td>II/B</td>
<td></td>
</tr>
</tbody>
</table>
(ii). The amendment mentioned above will come into effect retrospectively from the effective date of implementation of this Authority’s earlier Order dated 29 October 1999.

(iii). The VPT is directed to obtain the approval of this Authority to the Scale of Rates for its lands; and, apply only such approved rates in the leases granted by it.

7. In view of these decisions, the representation of the EIPL stands disposed of accordingly.

(S. Sathyam)

Chairman

[List of Ports | List of Orders]