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New Delhi, the 11 October, 2001

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. Nava Bharat Ferro Alloys Limited for fixation of lease rent of lands in Plot no. 28 and 29 of the Fishing harbour leased out by the Visakhapatnam Port Trust as in the Order appended hereto.

(S. Sathyam)

Chairman

Tariff Authority for Major Ports

No.TAMP/41/2001-VPT

M/s. Nava Bharat Ferro Alloys Limited ---- Applicant

V/s.

The Visakhapatnam Port Trust ---- Respondent

O R D E R

(Passed on this 20th day of September 2001)

This case relates to a representation from M/s. Nava Bharat Ferro Alloys Limited (NBFAL) relating to fixation of lease rent of lands measuring 1.02140 Acres in Plot No.28 and 29 of the fishing harbour leased out by the Visakhapatnam Port Trust (VPT).

2. In its representation, the NBFAL has made the following points:

(i). The land situated at plot No.28 and 29 of the fishing harbour was taken on lease from the VPT for a period of 30 years from 29 September 1980 to 28 September 2010 vide lease agreement dated 29 September 1980.

(ii). An integrated processing plant for marine products was setup for its business purpose. At present the operations are withheld owing to wide speculations in the business for last four years.

(iii). In the meantime, M/s. Universal Cold Storage Limited (UCS), of Visakhapatnam has submitted a proposal for transfer of the land in their favour for the unexpired period of nine years.

(iv). This transfer will help utilising the processing facilities, provide employment potential to 250 direct and 750 indirect workers, increase exports of marine products from the VPT and earn valuable foreign exchange to the Nation.

(v). In this backdrop, the NFBAL and the UCS together submitted a proposal to the VPT for the transfer of the plant to the UCS for the unexpired period i.e., upto 28 September 2010.

(vi). The VPT granted permission for the transfer of the land in favour of the UCS on 28 February 2001. The VPT, however, increased the lease rent of the land from Rs.76,749/- to Rs.8,13,727/- per year. This increase is abnormally high and no industry can afford to pay such huge rents.

(vii). Since the UCS could not afford to pay this high rent, both the parties jointly requested the VPT to reconsider the lease rent.

(viii). The Authority is requested to look into the matter and restore the pre-revised rent of Rs.76,749/- per annum.

3. In accordance with the procedure prescribed, a copy of the representation of the NBFAL was circulated to the VPT, VCCI, Visakhapatnam Port Users Association, and the UCS for comments. The comments received are summarised below:-

The Visakhapatnam Port Trust (VPT)

(i). The land measuring 1.02140 Acres in plot Nos. 28 and 29 was given on a 30 years lease to the NBFAL for Cold Storage and Processing Plant at an annual lease rent of Rs.76,749/-.

(ii). Subsequently, the NBFAL requested to transfer the land to UCS. These proposal were examined and allotment orders were issued for transfer of the lease for the unexpired period duly fixing the lease rents at Rs.8,13,727/- per year keeping in view the guidelines given by the Government vide its letter dated 25 October 2000.

(iii). The NBFAL has made a representation to the VPT stating that the hike in the lease rent from Rs.76,749/- to Rs.8,13,727/- was very high and requested to reconsider and restore the existing lease terms and conditions.

(iv). It has clarified the following points with reference to the representation from the NBFAL:

(a). The original leases are governed by the quinquennial land valuation being done by the District Revenue Authority (DRA). The VPT lands are divided into 30 zones. The zone-wise quinquennial land values were furnished by the DRA for the quinquennium 1998-2003 along with the base values on 6 December 2000. The wide variation in lease rent is due to the fact that the DRA is making token increase in quinquennial land value not exceeding 30% of the previous quinquennial rate.

(b). The (then) Ministry of Surface Transport in a similar case of transfer of lease from M/s. Apollo Traders to M/s. Raasi Refractories directed that the new lessee would pay the rent at current prevailing rates and other charges. As this case is also a transfer of lease, the base rate as fixed by the DRA has been adopted by the VPT.

The Vizagapatam Chamber of Commerce and Industry (VCCI)

- (i). The rates charged for the short-term lease of land in close proximity to dock area are the notified rates and are included in the 'Scale of Rates'. These rates are revised periodically. The recent revision was carried out with the approval of the TAMP.
- (ii). In the case of open areas leased out on long term basis, the VPT had earlier divided the land into zones and value of the land on each zone was determined by the State Government Revenue Authorities. Based on this valuation, 6% of the land value was collected as rent by the VPT. Subsequently, the Government has given directions to the Port to increase the rent from 6% to 9% of the land value.
- (iii). Recently, the VPT have adopted a different system and are collecting rent four to five times the rent charged earlier. The VPT is also insisting payment of one-year advance rent and premium (non refundable) of one-year rent.
- (iv). The trade is not aware about the introduction of this procedure by the VPT. It is also not known whether the VPT have taken prior approval of the TAMP.
- (v). Any steep increase in the lease rent shall affect the trade to a considerable extent.
- (vi). In this back drop, the Authority may examine the matter and issue suitable directions to the VPT to only collect the rent without making any charges; and, to refund the excess amount collected from the Trade.

4.1. A copy each of the comments received from the VPT and the VCCI was forwarded to the NBFAL as feedback information. In response to the above comments, the NBFAL has reiterated its views conveyed earlier; and, in addition has submitted the following points:

- (i). The Visakhapatnam fish harbour was constructed /developed with the grants given by the Ministry of Agriculture, World Bank with a specific objective to promote/ develop fishing industry primarily to improve the standard of living of the fishing community.
- (ii). The VPT cannot lease the land in the fish harbour to any business other than for fishing activity. The comparison of the land value of the fish harbour with that of the other zones is, therefore, unreasonable and unjustifiable.

4.2. A copy of the above comments of the NBFAL was forwarded to the VPT as feedback information/comments.

5.1. A joint hearing in this case was held on 23 July 2001 at the VPT. At the joint hearing, the following submissions were made:

M/s. Nava Bharat Ferro Alloys Limited (NBFAL)

- (i). Our business is declining. We want our unexpired portion of lease to be utilised by another.
- (ii). The rate proposed is very high. The trade cannot bear it.

Vizagapatam Chamber of Commerce and Industry (VCCI)

- (i). Please do not see this as a new lease. The same business is to be continued; only the party is different. View it as a continuum and maintain the same rates.**
- (ii). If a realistic 'distinction' is not made the lessee will sit there and prevent productive use of the property. They shall not even pay the old rent. What does the VPT gain? It will loose and may have to litigate; and, incur more expenditure.**

The Visakhapatnam Port Trust (VPT)

- (i). This 'distinction' is fraught with all kinds of vulnerabilities. How can we go verifying who does what; and, which is a continuum business and which is not?**
- (ii). Use of discretion in this manner will cause (avoidable) difficulties.**
- (iii). The Authority itself had said that the estate rentals must subsidise other activities and not vice-versa.**

5.2. At the joint hearing, the NBFAL has furnished written submissions reiterating its earlier points. In addition it has made the following points in favour of its representation:

- (i). Port Trusts and Municipal Corporations hold considerable extent of lands which are meant to facilitate infrastructure, residential colonies, parks, play grounds, green belts, etc. It is, therefore, unreasonable to consider these lands on commercial basis. The purpose for which the land is utilised is to be considered for fixing the land value. As per directions of the Government, the lease rent on such land shall be nominal value of Re.1/- sq. mtr. per year, with 30% escalation in the rent every 5 years.**
- (ii). Some public/private sector companies have taken extensive lands at a very low value nearly 50 years back. The present value of these lands shall be approximately Rs.1000/- sq. yard. The viability of these companies will be at a serious stake if the VPT fixes the rent at 9% of the present value of land.**
- (iii). Valuation of the lands meant for industries periodically at the current rates will affect industrial development, export/import potential, employment potential, etc.**
- (iv). The rent rates at the Ports Trust in Mumbai, Kolkata, Visakhapatnam are fixed on some rationale; and, are periodically increased based on land valuation fixed by the District Revenue Authorities considering the use of land.**
- (v). The VPT has increased the rent by nearly eleven times. The basis of this increase is not clear. The land values are assessed by the DRA once in five years. Based on this the VPT fixes the rent @ 6% to 9% of the land value. The increased rent of Rs.8,13,727/- per acre per year amounts to land value of Rs.1.00 crore per acre.**
- (vi). The pre-revised lease rent of Rs.76,749/- per year would have continued if these lands were not transferred to the UCS. The VPT have increased the rent abnormally high subsequent to the transfer though these lands are used for similar purposes.**

5.3. At the joint hearing, the VPT has furnished a copy of the Government's (revised) guidelines on lease of property.

6. Subsequent to the joint hearing, the VPT has made the following points in response to the comments of the NBFAL:

(i). The VPT has considered the transfer of this lease as a fresh case; and, keeping in view the instructions of the Government, the base rate as reported by the DRA is adopted.

(ii). Lease rent values of fishing harbour has not been compared with the rents applicable at the other zones. Only the value relevant to the zone in which the lease land is situated is adopted.

(iii). The VPT is only charging the rate applicable in the instant case; therefore, the representation made by the NBFAL is not correct.

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

(i). The VPT land in reference is allotted to the NBFAL on 30 years lease from 29 September 1980. The NBFAL wanted to surrender the land due to lack of commercial opportunity to it; and, it has already been allotted by the VPT to the UCS for the unexpired portion of the original lease. The grievance of the NBFAL is that the allotment made to the UCS must also be governed by the same lease rent it was paying and not the revised lease rent based on current rates.

(ii). The NBFAL has already surrendered the land; and, it has been transferred to the UCS vide the VPT's allotment letter dated 28 February 2001. It is not clear whether the allottee has taken over possession of the land. In any case, if at all anyone has a grievance, it will be the UCS. Strangely, it has not responded to our request to furnish its comments and has also not participated in the proceedings at all.

(iii). It has to be recognised in this connection that a transfer of a lease is virtually a case of new lease. The old lease is deemed to have been terminated (in respect of the area concerned); the land in reference is deemed to have been surrendered back; and, a new lease (governed by a new lease deed) is sanctioned. The 'transfer' clause is significant more from the point of view of the procedure relating to identification of the (new) lessee as also for avoiding disputes about breach of the lease conditions. The practice of limiting the (new) lease to the unexpired period of the original lease can be said to flow from this procedure. Otherwise, for all practical purposes, it has to be viewed as a case of a new lease. And, the Govt. Guidelines rightly stipulate that instead of carrying forward the original lease rental rate, the rate prevailing at the time of the 'transfer' shall govern the new transaction.

(iv). This Authority has already decided in the cases relating to the NMPT and the CHPT that sub-letting is not permissible. Implied in this decision is the principle that allotment of land, whenever it is made, is to be governed by the notified rate applicable at the time of such allotment.

(v). Till formulation of its own guidelines for determination of land lease rentals, this Authority has decided to continue with the method presently being followed by the Port Trusts based on the Guidelines formulated by the Government in this regard. The VPT has indicated that the Government Guidelines stipulate that a new lessee will pay the rent at the current prevailing rate.

(vi). The VPT has referred to a recent policy decision of the Government (dated 17 July 2001) which states that 'transfer of lease may be allowed subject of the transferee agreeing to pay the revised lease rent as prevalent at the time of transfer'. It is noteworthy that this Authority has not been consulted before issuing this 'policy decision'. Statutorily, only this Authority can decide on the rate and conditionalities for use of Port Trusts properties. Even as Section (111) of the MPT Act empowers the Government to issue policy directions, it also stipulates that this Authority shall be consulted before any such direction is given.

Notwithstanding this fundamental legal position, the decision of the Government brought to our notice by the VPT tallies with the stand already taken by this Authority in this regard. That being so, the action of the VPT to transfer the land in reference to the UCS at the prevailing rate cannot be said to be unreasonable.

(vii). The suggestions of the VCCI about making a distinction between the new leases and transfer of existing leases cannot be said to be very sound. The impracticality and vulnerabilities of making such distinction have been clearly brought out by the VPT. Whether it is a new lease or transfer of lease, the lease rent applicable will be the prevailing notified rate for the land being allotted.

(viii). The lease rent for different zones of the VPT lands was notified by this Authority in November 1999. This Authority considered 6% of the land value as lease rent. The NBFAL and the VCCI have now indicated that the VPT has considered 9% of the land value for fixing the lease rent for transfer of land to the UCS. The VPT has also, as a passing remark, mentioned about land valuation made by the DRA in December 2000. It is to be mentioned here that this Authority has not approved any revision of lease rent of the VPT after November 1999. It is also relevant here to mention that 'prevailing rate' for land means the rates approved for the applicable land by the competent authority and included in the Scale of Rates for land in force at the time of such allotment / transfer of land. We presume that the VPT has transferred the lease of land in reference to the UCS at the notified lease rate as per its Scale of Rates approved by this Authority. That being so, the request of the NBFAL for reduction in the lease rent does not merit any consideration.

8. In the result, and for the reasons given above, and based on a collective application of mind, this Authority rejects the representation of the NBFAL about reduction in lease rent of lands allotted to the UCB on transfer on lease basis.

(S. Sathyam)

Chairman

[[List of Ports](#) | [List of Orders](#)]